IN THE

Supreme Court of the United States

October Term, 1976
No. 76-1512

RICHARD M. CLOWES, Superintendent of Schools of the County of Los Angeles; HOWARD B. ALVORD, Treasurer and Tax Collector of the County of Los Angeles; LONG BEACH UNIFIED SCHOOL DISTRICT; EL SEGUNDO UNIFIED SCHOOL DISTRICT; BURBANK UNIFIED SCHOOL DISTRICT; BEVERLY HILLS UNIFIED SCHOOL DISTRICT; and SAN MARINO UNIFIED SCHOOL DISTRICT,

Petitioners,

vs.

JOHN SERRANO, JR., *et al.*,

Respondents.

Petition for a Writ of Certiorari to the Supreme Court of the State of California.

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Petitioners,

vs.

JOHN SERRANO, JR., *et al.*,

Respondents.[1]

Petition for a Writ of Certiorari to the Supreme Court of the State of California.

[1]The respondents are: John Serrano, Jr.; John Anthony Serrano, by John Serrano, Jr., his guardian ad litem; Lillian Acuna Aceves; Billy Aceves, by Lillian Acuna Aceves, his guardian ad litem; Paul Aceves, by Lillian Acuna Aceves, his guardian ad litem; Patrick Aceves, by Lillian Acuna Aceves, his guardian ad litem; Joseph Cain; Silvester Cain, by Joseph Cain, his guardian ad litem; Vanessa Cain, by Joseph Cain, her guardian ad litem; Joanna Denise Cain, by Joseph Cain, her guardian ad litem; Wrenford Boen Hall; Jon Primus Hall, by Wrenford Boen Hall, his guardian ad litem; Peggy J. Kidwell; Elizabeth Adele Evans, by Peggy J. Kidwell, her guardian ad litem; Diane Michelle Evans, by Peggy J. Kidwell, her guardian ad

(This footnote is continued on next page)

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California filed in this proceeding on December 30, 1976, as modified and rendered final by an order filed on February 1, 1977.

Opinion and Judgment Below.

The opinion of the California Supreme Court (which includes the judgment sought to be reviewed by this petition), together with dissenting opinions, is printed as Appendix A in the Appendix, p. 1. It is reported as *Serrano v. Priest* (1976) 18 Cal.3d 728, 135 Cal. Rptr. 345, 557 P.2d 929 [hereinafter "Serrano II"]. The Court's order filed on February 1, 1977, modifying the "dispositive order of judgment" made in the Serrano II opinion, is printed as Appendix B in the Appendix, p. 96. The prior opinion of the California Supreme Court in the same case is printed as Appendix C in the Appendix, p. 97, and is reported as *Serrano*

litem; Stephanie Lyn Kidwell, by Peggy J. Kidwell, her guardian ad litem; Daphne Anne Kidwell, by Peggy J. Kidwell, her guardian ad litem; Mamie Price; James Archer, by Mamie Price, his guardian ad litem; Monica Archer, by Mamie Price, her guardian ad litem; Mona Archer, by Mamie Price, her guardian ad litem; Gene Anthony Price, by Mamie Price, his guardian ad litem; Burrell Price, Jr., by Mamie Price, his guardian ad litem; Gerald Price, by Mamie Price, his guardian ad litem; Marcelene Thomas; Kenneth Lee Plair, by Marcelene Thomas, his guardian ad litem; Willetta Heath, by Marcelene Thomas, her guardian ad litem; Consuelo Valdivia; Fred Valdivia, by Consuelo Valdivia, his guardian ad litem; Mike Valdivia, by Consuelo Valdivia, his guardian ad litem; Esperanza Valdivia; Yolanda Garcia, by Esperanza Valdivia, her guardian ad litem; Rita D. Garcia, by Esperanza Valdivia, her guardian ad litem; Carrie C. Garcia, by Esperanza Valdivia, her guardian ad litem; Victoria Valdivia; William Valdivia, by Victoria Valdivia, his guardian ad litem; Patsy P. Valdivia, by Victoria Valdivia, her guardian ad litem, and, as intervenor, California Federation of Teachers, AFL-CIO,

v. Priest (1971) 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241 [hereinafter "Serrano I"]. The vacated opinion of the California Court of Appeal (to which Justice McComb referred as stating his reasons for dissenting in Serrano I), is printed as Appendix D in the Appendix, p. 149, and is reported as *Serrano v. Priest* (1970) 89 Cal.Rptr. 345. The unreported "Memorandum Opinion re Intended Decision" of the trial court, rendered on April 10, 1974 after trial on remand by Serrano I, is printed as Appendix E in the Appendix, p. 161. The unreported judgment of the trial court, affirmed by final order of the California Supreme Court on February 1, 1977, is printed as Appendix F in the Appendix, p. 282.

Jurisdiction.

The judgment of the California Supreme Court in Serrano II was filed on December 30, 1976. A timely petition for rehearing was denied on January 27, 1977. On January 28, 1977, the California Supreme Court extended the time for granting or denying a rehearing to February 2, 1977. On February 1, 1977, the Court modified its dispositive order of judgment ("The judgment is affirmed.") by adding thereto the following sentence: "We reserve jurisdiction for the purpose of considering and acting upon respondents' motion for an award of attorneys' fees on appeal, filed January 28, 1977." The February 1, 1977 order also provided, "The judgment and this order are final forthwith."

This Court's jurisdiction is invoked under 28 U.S.C. §1257(3) and Rule 19(1)(a).

Question Presented.

Whether a final state court judgment, rendered in judicial proceedings in which the Legislature and the Governor were not made parties, was rendered in excess of the court's jurisdiction and thereby abridged 5th and 14th Amendment due process rights assertable by the petitioners bound by the judgment, under the following circumstances:

(1) the judgment declares that certain structural features of the state's school financing system render the system invalid under the state constitution;

(2) the state constitution imposes an affirmative duty upon the lawmakers (the Legislature and the Governor) to provide an ongoing public school system and for its financial support;

(3) no public official or agency other than the lawmakers is empowered to establish or modify the structure of the state's system of financing its public schools;

(4) the relief sought (restructuring the school financing system so that district per-pupil taxable wealth will not influence district per-pupil spending levels) could be afforded only by judicial decrees directed to the non-party lawmakers;

(5) the only relief available by enforcing the judgment against the defendant parties—closing the public schools by enjoining the defendants from implementing the school financing laws—would seriously prejudice the non-party lawmakers with respect to their affirmative duty to provide an ongoing public school system, and would simply constitute an indirect means of coercing the non-party lawmakers to restructure the school financing system so that the system would comport

with the court's view of constitutional requirements; and

(6) restructuring the school financing system as required by the judgment stands to adversely affect vital educational interests of millions of children, most of whom were not represented and who in fact were purportedly represented by the plaintiffs.

Constitutional, Statutory and Administrative Provisions Involved.

The positive enactments involved are:

(1) the 5th and 14th Amendments to the United States Constitution—in particular, the due process clauses thereof;

(2) the following provisions of the California Constitution:

Article I, §7;
Article III, §3;
Article IV, §§1, 10 and 16;
Article IX, §§1, 5, 6, 6½ and 14;
Article XIII, §§1, 14, 20 and 21;

(3) Section 389 of the California Code of Civil Procedure; and

(4) Rule 216 of the California Rules of Court.

These enactments are printed as Appendix J in the Appendix, pp. 322-330.

Statement of the Case.

The State of California maintains a public school system which annually provides a free education to about 4½ million children in kindergartens and grades 1 through 12. In 1973-74 the public schools were

operated and maintained by 1,054 school districts. These were comprised of 689 elementary districts (kindergartens and grades 1 through 8), 114 high school districts (grades 9 through 12), and 251 unified school districts (combining the elementary and high school levels).

California, as is the case in virtually all the states,[2] uses a "foundation program" system of financing its public schools. Under California's system, the sources of current operating revenues for each district are of three types: foundation program revenues, categorical aid funds, and local supplements.

The foundation program revenues may be further broken down into three categories: basic aid, district aid and equalization aid.

Basic aid is an apportionment made by the State to each school district in the amount of $125 per pupil,[3] $120 of which is assured by the California Constitution.[4] *District aid* represents the expected contribution of a district toward achievement of its foundation program. It is computed by determining what the yield would be of a hypothetical tax rate (known as the "computational tax rate") in the district. For example, "district aid" for an elementary district with an assessed valuation[5] per-pupil of $10,000 would

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[2]See *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 48-49 (1973).

[3]California Education Code §§17751, 17801.

[4]Article IX, §6, para. 4, Appendix J, Appendix, p. 326.

[5]County assessors are directed to assess property at 25% of full value. Revenue and Taxation Code §401.

be computed at .0223 (the computational tax rate)[6] times $10,000, or $223 per pupil.

The third component of foundation program revenues is *equalization aid*. For any district in which the sum of *district aid* and *basic aid* of $125 per pupil is less than the foundation program, the State apportions *equalization aid* sufficient to produce the foundation program amount. Thus, in the example of an elementary district with a per-pupil assessed valuation of $10,000, and a 1973-74 foundation program of $765 per pupil, the State would apportion equalization aid of $417 per pupil ($765-$125-$223).

The per-pupil foundation program amounts are essentially the same for all districts of the same type, except that the amounts are adjusted upwardly for "necessary small schools" to accommodate their higher per-pupil costs of providing the same education.

In 1973-74, about 85% of the pupils were educated in "equalization aid districts"—districts sufficiently "poor" in per-pupil assessed valuation to qualify for equalization aid.

California's foundation program system thus assures each and every district that it can have sufficient financial resources to provide a basic educational program without excessive local taxation.

By the *categorical aids* component, the state recognizes that some districts must spend more than others in order to provide the same level of educational serv-

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[6]Commencing with the 1973-74 school year the computational tax rates have been $2.23 per $100 of assessed valuation for elementary districts and $1.64 per $100 for high school districts. Unified districts, which combine elementary and high school levels, thus have a computational tax rate of $3.87 per $100 of assessed valuation.

ices. Thus it costs more to educate children with various types of physical, mental and socio-economic handicaps, and some districts must spend more for pupil transportation. To the extent that the state and federal governments perceive and recognize such higher-cost categories of needs, "categorical aids" are provided.

It may be seen that California's system, thus far, provides essentially equal financial resources per educational task unit for all the districts. It is only by virtue of the third major component of the system, *local supplements*, that inequalities in financial resources among the districts can be identified.

The *local supplements* component of the school finance system permits each school district to use local property taxes to raise funds to supplement its foundation program funds and categorical aids. Sections 20 and 21 of Article XIII[7] of the California Constitution provide that, within the limits of such maximum property tax rates as the Legislature may provide, the "Legislature shall provide for an annual levy by county governing bodies of school district taxes sufficient to produce annual revenues for each school district that the district's board determines are required for its schools and district functions." The California Constitution thus specifically requires that some unspecified measure of "local fiscal control" be permitted in the state's school financing system.

California's school finance system was attacked by plaintiffs in 1968 as denying equal protection of the laws under the United States and California constitutions, culminating in the California Supreme Court's final decision and judgment in *Serrano v. Priest* (1976)

[7]Appendix J, Appendix, pp. 328-329.

18 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929 (Appendix A, Appendix, p. 1), hereafter referred to as "Serrano II". It is this Serrano II decision and judgment which petitioners seek reviewed.

Serrano II affirmed a trial court judgment (Appendix F, Appendix, p. 282) which granted plaintiffs their requested declaratory relief with respect to the alleged invalidity of the state's school finance system. The trial court, without having acquired jurisdiction over the legislature or the governor (though urged by defendants to do so), purports by its enforceable declaratory relief judgment to specify powers and duties of the legislature and governor with respect to enacting into law a constitutional school financing system.

More specifically, the trial court judgment affirmed by Serrano II declares that California's school financing system violates the equal-protection-of-the-laws provisions of the California Constitution,[8] but not the equal-protection provisions of the Fourteenth Amendment to the United States Constitution, and goes on to indicate the court's further intention with respect to enforcement of the judgment.

Thus, the judgment goes on to provide that any gradual elimination of the unconstitutional features of the system, by legislative and executive actions, must take place in such a way that the system will be fully constitutional no later than six years from the date of entry of the judgment. Several provisions of the judgment indicate that the court contemplates that the manner in which the school financing system is to be revised in order to conform with California's

[8]Then Article I, §§11 and 21; now Article IV, §16 and Article I, §7, respectively. Appendix J, Appendix, pp. 322-325.

equal-protection provisions is to be by way of "enactment into law" of statutes by the legislature with the approving signature of the governor. The judgment concludes by providing that the trial court is retaining jurisdiction of the action and over the parties so that any party may "apply for appropriate relief in the event that relevant circumstances develop, such as a failure by the legislative and executive branches of the state government to take the necessary steps to design, enact into law, and place into operation, within a reasonable time from the date of entry of this Judgment," a fully constitutional school financing system. (Trial Court Judgment, Appendix F, Appendix, p. 288.)

It is thus clear that the California courts recognize that compliance with the final judgment will require affirmative action on the part of the legislature and the governor, despite the fact the courts had not acquired jurisdiction over either of them.

How Federal Question Was Raised and Further Statement of the Case.

The case commenced with the filing of a complaint in a trial court in Los Angeles, California, in August of 1968. The complaint was captioned "Suit to Secure Equality of Educational Opportunity under Equal Protection Clause of the United States Constitution and California Law and Constitution."

The plaintiff children, 27 in number, sued on their own behalf and on behalf of all other children attending California schools except the schools of that district, "the identity of which is presently unknown", which school district affords the greatest educational opportunity of all school districts within California.

The defendant state officers were Ivy Baker Priest, in her capacity as Treasurer; Max Rafferty, in his capacity as Superintendent of Public Construction (later succeeded by Wilson Riles); and Houston I. Flournoy, in his capacity as Controller. The other named defendants were two county officers, Harold J. Ostly, Treasurer and Tax Collector of the County of Los Angeles, and Richard M. Clowes, Superintendent of Schools of Los Angeles County, who were sued in their official capacities and as representatives of their counterpart officers of each of the other 57 counties of the State. The complaint also designated "Does I through C," as fictitious defendants, but at no time in the proceedings were real defendants named in their stead.

The trial court sustained general demurrers to the complaint, and, upon failure of the plaintiffs to amend, dismissed the complaint. On appeal, the California Supreme Court reversed the trial court judgment of dismissal, holding that the complaint stated facts which, if true, were sufficient to establish that California's school financing system was unconstitutional.

The court pointed out for the benefit of the trial court on remand that if it should determine that the school financing system is unconstitutional, it could properly provide for enforcement of the judgment in such a way as to permit an orderly transition from an unconstitutional to a constitutional system, and that any such judgment should make clear that the existing system was to remain operable until an appropriate new and valid system could be put into effect. (Serrano I, 5 Cal.3d at 618-619, Appendix C, Appendix, pp. 146-147.)

On May 1, 1972, the three state officers filed an answer [Clk. Tr. p. 174] and the two county officers filed a separate answer [Clk. Tr. p. 180].

The answer of the county officers raised numerous affirmative defenses, among which the following are pertinent to the federal question presented. In the tenth affirmative defense, it was alleged that in the event of invalidity of the financing system, "the power to rectify the same lies with the Congress of the United States of America or with the Legislature of the State of California, rather than with the courts." The eleventh affirmative defense asserted that the doctrine of separation of powers as among the legislative, executive and judicial branches of government militates against judicial intervention in the alleged "financing scheme." The fifteenth affirmative defense alleged that the defendants were legally unable, even with the aid of judicial intervention and command, to reallocate the funds available for financial support of the school system, as prayed for by plaintiffs, and that the "only legally constituted body which may do so is the State Legislature, which is not subject to a suit such as this." (Counsel for defendants subsequently realized that the state legislature is subject to a suit such as this.) This defense further asserted that plaintiffs thus sought by indirection to accomplish that which they might not have accomplished directly. The sixteenth affirmative defense asserted that the allocation of public resources for governmental services requires discretionary determinations which must be left to the State Legislature rather than to the courts.

On June 19, 1972, the trial court permitted seven school districts of the County of Los Angeles, including

the school districts joining in this Petition, to intervene as defendants. The school districts joined in and adopted as their own the answer of the County officers.

On November 29 and 30, 1972, the trial court held an official pretrial conference. The trial court had previously indicated its intention that the trial would commence on December 26, 1972. The Los Angeles County Counsel, representing the county officers and the intervening school districts, in the course of voicing objections to proceeding to trial that soon, raised the question of whether indispensable parties were before the court, namely the legislature and (because of his veto power) the governor. Noting that plaintiffs' counsel had requested dismissal of the State Treasurer and the County Treasurer "because they wouldn't contribute anything to this case", the County Counsel noted that, "actually none of the defendants contribute anything to this case, because none of the parties to this case are able to re-structure the finance system of California." It was noted that none of the defendants had been derelict in their duties under the only guidelines they had, namely, the statutory laws which the plaintiffs contended were unconstitutional. The County Counsel further noted that in the event the legislature did nothing in response to a judgment declaring the system unconstitutional, to enforce its judgment the court would be forced to itself re-structure the financing system, and if it were not going to lower the educational opportunities throughout the State, it would have to find additional sources of revenues or reallocate methods of arriving at a school financing system. The trial court judge stated that a motion could be filed to add the legislature, but

that the judge had no intention of granting such a motion; that the case was going to proceed with the parties before it; but if there were deficiencies they could be taken up on appeal; that the court had no intentions "at this late stage—and this case is supposed to be ready for trial—to now bring in any additional parties."[9] [Rep. Tr. pp. A-13 to A-16.]

The trial court then took up the petition for leave to intervene by the California Federation of Teachers, and permitted the requested intervention on the condition that the intervenor adopt all of the allegations of the plaintiffs' complaint as its complaint in intervention, so that no additional issues would be raised.

On December 4, 1972, in further pretrial proceedings, this time with respect to discovery matters, the County Counsel again expressed the belief that the legislature was an indispensable party, and the trial court judge responded that the court had ruled against the County Counsel on that point. [Rep. Tr. p. A-216.]

The trial court then made its pretrial conference order, filed December 13, 1972, which under California law controls over the pleadings in all further proceedings in the case.[10] The pretrial conference order included the following pertinent matters:

First, "The relief which plaintiffs seek is (1) a declaration that the California public school financing system is unconstitutional, (2) an order directing defendants to reallocate school funds so as to remedy this invalidity, and (3) an adjudication that the trial court retain jurisdiction of the action so that it may restructure the California public school financing system if defendants and the California State Legislature fail to do so within a reasonable time." [Clk. Tr. p. 601.]

[9]Under California law, the objection that indispensable parties are not before the court goes to the jurisdiction of the court, and may be raised at any time, even for the first time on appeal. *Covarrubias v. James* (1971) 21 Cal.App.3d 129, 134, 98 Cal.Rptr. 257, 260.

[10]Rule 216, California Rules of Court, Appendix J, Appendix, p. 330.

Second, that the complaint be deemed amended by striking therefrom the allegation that a disproportionate number of school children who are black children, children with Spanish surnames, and children belonging to other minority groups, reside in school districts in which a relatively inferior educational opportunity is provided.

Third, that the complaint be deemed amended with the result that the County officers were sued in their respective official capacities, and not as representatives of a class of treasurers, tax collectors, and superintendents of public schools of the other counties in the state.

Fourth, plaintiffs' request that the action be dismissed as to defendants Ivy Baker Priest, the State Treasurer, and Harold J. Ostly, the County Treasurer and Tax Collector, was denied.

Fifth, the class of children represented by plaintiffs was changed to all children in the State of California attending the public elementary schools, junior high schools, and high schools *other than the children attending such schools in the intervening school districts.*

In the course of the trial, which commenced on December 26, 1972, two of the state officers, Superintendent of Public Instruction Wilson Riles and State

Controller Houston I. Flournoy (who had substituted counsel of their own choosing for the attorney general who had previously represented them), testified on behalf of the plaintiffs. The other state officer, State Treasurer Ivy Baker Priest, continued to be represented by the Attorney General but did not testify. The brunt of the burden of defending the system fell upon the County Counsel of Los Angeles County, representing the two County officers and the intervening school districts.

The trial court entered its judgment in declaratory relief on September 3, 1974. Plaintiffs' counsel moved the trial court for an award of attorneys' fees claimed to be worth $3,619,020 and the court awarded $400,-000 in attorneys' fees to each of the two firms representing the plaintiffs, for a total of $800,000, which judgment was entered against the state officer defendants.

Of the state officer defendants, only the Treasurer, Ivy Baker Priest, filed a notice of appeal from the declaratory relief judgment. (All three state officers appealed from the award of attorneys' fees.) She was shortly succeeded in office by Jesse Unruh, who abandoned the appeal. He nevertheless filed a "Brief of Defendant/Respondent Jesse Unruh, Treasurer of the State of California," asserting that he "strongly supports the trial judge's decision in favor of plaintiffs." Thus two of the state officers chosen by the plaintiffs sided with the plaintiffs throughout the judicial proceedings and the other state officer ultimately sided with the plaintiffs.

The two county officers and five of the seven intervening school districts appealed from the judgment. (All of these appellants are parties to this petition.) In their opening brief they reasserted their contention

that the trial court had no jurisdiction to proceed with the trial in the absence of the legislature and the governor, as indispensable parties to the suit. This brief noted that the effect had been "to deny to the people, including appellant public officers and the citizens of appellant school districts, due process of law under Amendments V and XIV to the United States Constitution and similar guarantees of California's Constitution and laws." (Appendix G, Appendix, p. 294.)

The defendants' reply brief reiterated that the failure of the trial court to order that indispensable parties—the legislature and the governor—be brought into the action resulted in denying defendants due process of law under the United States and California Constitutions. (Appendix H, Appendix, pp. 304 and 306.)

The California Supreme Court, in Serrano II, ruled that the legislature and the governor were not indispensable parties, but failed to make any mention of the defendants' contention that the failure to acquire jurisdiction over the legislature and the governor resulted in a denial of federal and state due process rights. (Appendix A, Appendix, pp. 28-32.)

Defendants filed a petition for rehearing, the second point of which was: "This Court Should Correct Its Error In Holding That the Legislature and the Governor Are Not Indispensable Parties and Restore to Them Their Rights to be Heard, the Ultimate Denial of Which Would Deny Them and the Appellants Due Process of Law Guaranteed by the United States and California Constitutions." (Appendix I, Appendix, p. 310.)

The petition was denied without opinion, and the decision became final on February 1, 1977.

REASONS FOR GRANTING THE WRIT

1. The federal question presented is of great public importance for the following reasons:

a. The vital educational interests of as many as half of California's 4½ million children attending the public schools stand to be adversely affected each year by the Serrano II decision.[11] The interests of only about 125,000, or 5.6%, of the 2¼ million adversely affected children were represented in the judicial proceedings culminating in Serrano II. (These 125,000 pupils are those attending school in the seven school districts which intervened as defendants after the California Supreme Court, in Serrano I (August, 1971), remanded the cause to the trial court.) The interests of the remaining 2 1/8 million adversely affected children were not represented, although *plaintiffs* purported to represent them along with the 2½ million other children who stood to benefit by the suit.

[11]Those children who stand to be adversely affected are those who live in districts of above-average "wealth", i.e., districts in which the value of taxable property divided by the number of pupils is greater than the statewide average for the type of district under consideration. It is readily apparent that about half the pupils live in below-average "wealth" districts and about half in above-average "wealth" districts. Serrano II requires either (1) *actual* equalization of district "wealth" by district reorganization, perhaps assisted by transfer of commercial and industrial property from district tax rolls to a state tax roll, or (2) *artificial* equalization of district "wealth" by a state system of rewarding the tax effort of low-wealth districts and penalizing the tax effort of high-wealth districts so that for all districts of the same type the *net* per-pupil yield of a given tax rate would be the actual yield of that tax rate in a district with a certain per-pupil tax base. The latter alternative is the "district power equalizing" scheme suggested by Coons, Clune and Sugarman in their book Private Wealth and Public Education (1970) Bellknap Press of Harvard Univ. Press, Cambridge, Mass., at 201-242. The Serrano II requirement of actual or artificial equalizing of district "wealth" thus promises to reduce the spending levels for about half of the state's pupils from the spending levels which would be attained with any given level of state and federal support.

Thus millions of children, and future generations of millions of children, have been denied procedural due process of law.[12] These millions of children should have been represented, and they should have been represented by those charged by the California Consituation[13] with the duty to provide for their education, namely, the legislature and the governor.

b. The question presented goes to the heart of the problem of the proper role of the courts in constitutional adjudication where the courts are asked to intervene in the performance of affirmative legislative duties in providing ongoing state programs of vital public importance. Archibald Cox, in his recent book "The Role of the Supreme Court in American Government" (Clarendon Press, Oxford, 1976), states on page 92, "The most ambitious effort to use the Constitution to reform ongoing State Programmes by imposing new affirmative duties came in the area of school financing". This comment came after review of the school desegregation cases and reapportionment cases. Professor Cox went on, at page 93:

> "These aspects of the school-finance litigation are characteristic of the new dimensions of much constitutional litigation:

[12]In *Goss v. Lopez,* 419 U.S. 134 (1975), the Court specified that a child threatened with suspension from school for a few days must be accorded certain minimal procedural due process rights. Petitioners cannot perceive how Serrano II can stand while *Goss v. Lopez* remains standing.

[13]California Constitution, Article IX, Secs. 1, 5, 6, 6½ and 14, and Article XIII, Secs. 20 and 21. Appendix J, Appendix, pp. 325-328.

"1. The suit looked to judicial reform of long-established practices prevailing in virtually every State.

"2. The constitutional claim depended upon group comparisons, asserted a group right, and would have reordered the distribution of tax burdens and revenue benefits among various groups. The State was not classifying individuals in terms of wealth.

"3. The complainants were not seeking to prevent a State from intruding on their right to be left alone, or from regulating their conduct without observing procedural safeguards; they were saying that the State was not operating its educational system in the way which the complainants wished and that it should be required to operate the system differently. The issue concerned the on-going performance of an affirmative State programme. The decree, if the complainants prevailed, would prescribe affirmatively the manner in which the State's duty should be performed."

In recent school finance litigation in New Jersey the complainants did prevail, the state Supreme Court holding that the state had failed to provide a "thorough and efficient" system as specified in the state constitution. When the legislature failed to correct the judicially-noted deficiencies within a reasonable time, the state Supreme Court did in fact find it necessary to order redistribution of certain funds among the school districts contrary to legislative direction, and at one point even found it necessary to enjoin operation of the schools. *Robinson v. Cahill,* 69 N.J. 133, 351 A.2d 713 (1975

—"Robinson IV"), and *Robinson v. Cahill,* 70 N.J. 155, 358 A.2d 457 (1976—"Robinson VI").

In the New Jersey case, however, unlike Serrano II below, the legislature and the governor were at all times parties to the judicial proceedings. It is believed that the New Jersey school finance decisions represent an unparalleled intrusion by the judicial branch of government into the responsibilities of the legislative and executive branches in affirmatively providing ongoing State programs of great public importance. Two of the New Jersey Supreme Court Justices, in Robinson IV, believed that the court majority had gone too far in view of the important separation of powers doctrine. Whether or not the New Jersey Supreme Court extended the judicial power to its ultimate limit in dealing with the legislative and executive branches of government, when those branches were afforded full hearings in court, it is clear that a vital question of public importance is raised by the Serrano II decision where the affirmative responsibilities of the legislature and the governor to provide an ongoing public school system have been intruded upon by the courts without causing the legislature and the governor to be brought in as parties to the judicial proceedings.

The absence of the legislature and governor from court proceedings is especially objectionable in a case such as this, in which the court finds it necessary to instruct the lawmakers concerning the legislation they should enact in reaching solutions to complex statewide school finance problems. In this case, the trial court listed six alternatives to the present school finance system which were, in its opinion, "workable, practical and feasible". [Finding of Fact 198, XI Clk.

Tr. p. 2802.] Neither the legislature nor the governor was before the court to present their views concerning these six alternatives, or for that matter, their views concerning the propriety of treating district wealth as the single villain in the school finance drama. Thus, the court made a determination concerning the workability, practicability and feasibility of legislative proposals without hearing from the branches of government legally responsible for making such determinations. Without participation by the legislature and governor in this case, there was not "that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions". *Baker v. Carr* (1962) 369 U.S. 186, at 204, quoted with approval in *United States v. Nixon* (1974) 418 U.S. 683, at 697.

If the rule in Serrano II is permitted to stand, public interest and other law firms will be encouraged, in launching monumental class action attacks on the constitutionality of school finance systems and other systems of providing governmental services through local agencies, to seek out defensive "soft-spots", where the motivation and resources to private adequate and appropriate defenses are sorely lacking.

In the case below, the three defendant state officers showed little heart for the defense, and the two defendant officers of Los Angeles County could hardly be expected to have the interest necessary to provide an appropriate defense, inasmuch as the services they provide were not under attack. It was only the intervention of several school districts which believed that their services to their pupils would be adversely affected, that provided motivation for a strenuous defense.

Even so, the value of the legal services mustered by the defense could only have been a small fraction of the value of plaintiffs' legal services, which they claimed were worth $3,619,020, or a small fraction of the $800,000 awarded them by the trial court. Nor could it be expected that these few school districts of above-average or high per-pupil taxable wealth would present the broad view of the state school finance system which would best serve the interests of all pupils of the state, as one would expect of a defense presented by the legislature and the governor.

Further, absent the legislature and the governor there was no defendant before the court which could have entered into any meaningful settlement negotiations with the plaintiffs. Had the legislature and governor been parties, it might have been possible for the plaintiffs to persuade them that the school finance system required some adjustments and the parties might have worked out a proposed settlement, obtained the views of the court thereon, and the lawmakers could have proceeded to enact appropriate legislation to effectuate the settlement. Efficiency in the administration of justice requires that the real parties in interest—those who can settle the lawsuit—be subject to the jurisdiction of the court. The ever-mounting burdens on our nation's courts underline the increasing importance of the judicial policy favoring settlement of legal disputes. To permit Serrano II to stand as precedent would be to subvert this important judicial policy.

c. The federal question presented carries with it important implications with respect to proper application of the fundamental doctrine of separation of powers.

Whether or not the doctrine of separation of powers is an inherent concept of a republican form of government and accordingly guaranteed to the states by Art. IV, Sec. 4 of the United States Constitution—as concluded in *Vansickle v. Shanahan,* 212 Kan. 426, 511 P.2d 223 (1973)—there can be no doubt that it is a doctrine of fundamental significance.

In the decision below the judicial branch has declared the duties of the legislative and executive branches without affording them a hearing in the judicial proceedings.

It is one thing for the judicial branch to inform the legislative and executive branches what they must do to properly carry out duties specifically imposed upon them by the state constitution when they are represented in court;[14] it is quite another thing to do so when they are not. The federal question presented asks whether, in the latter instance, federal due process rights have been violated, due process rights of all the people for whom the legislative and executive branches of government act as *parens patriae.*

There should be no doubt that Serrano II, in suspending the sword of Damocles by a fine hair over the heads of the legislature and the governor—and of millions of the children they are charged to educate —without having heard from them, presents a most important due process question for this Court to resolve.

2. The decision below conflicts in principle with decisions of this Court.

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[14]As in *Robinson v. Cahill,* 69 N.J. 133, 351 A.2d 713 (1975—"Robinson IV"), and 70 N.J. 155, 358 A.2d 457 (1976—"Robinson VI").

In the landmark case of *Pennoyer v. Neff,* 95 U.S. 714 (1877), this Court held that a state court judgment which determines the rights and obligations of parties over whom the court has no jurisdiction is invalid as violating the due process clause of the 14th Amendment to the United States Constitution.

More recently, this Court held that a Florida judgment was void where the court had not acquired jurisdiction over a party which was (under a general rule of law to which Florida adhered) "indispensable". *Hanson v. Denckla,* 357 U.S. 235 (1958). This Court went on to hold that any defendant affected by the court's judgment has that "direct and substantial personal interest in the outcome" that is necessary to challenge whether that jurisdiction was in fact acquired. *Hanson v. Denckla, supra,* 357 U.S. 235, 245.

It is true that in *Denckla* the Florida court had not reached the question of whether the absent party was "indispensable", whereas the California Supreme Court in Serrano II did reach the question and decided that the legislature and the governor were not "indispensable" parties.[15] In doing so the court treated the "indispensable-party, due process" argument as a

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[15]It seems clear that Serrano II employed fallacious reasoning in so deciding. The court relied on language from its leading case of *Bank of California v. Superior Court,* 16 Cal.2d 516, 521, 106 P.2d 879 (1940), stating that "indispensable parties are parties whose interests, rights or duties will inevitably be affected by any decree which can be rendered in the action" and then describing "typical" situations of a number of persons having undetermined interests in the same property or fund. The court concluded, "Manifestly, the Legislature and the Governor have no interest in this proceeding which is remotely comparable to that contemplated by this language." (Serrano II, Appendix A, Appendix, p. 31.) The court thus reasoned from a "typical" situation in an atypical case instead of from its own general rule.

mere "preliminary procedural matter" (Serrano II, Appendix A, Appendix, p. 28) and completely ignored its due process component. Even though this Court generally treats indispensable party issues arising in state courts as matters to be decided by the state courts (*Hanson v. Denckla, supra*), since failure to acquire jurisdiction over indispensable parties can result in federal due process violations, as *Denckla* affirms, the state courts cannot be treated as having the last word as to the indispensability of absent parties. In fact, this Court in *Denckla* reversed the Florida judgment and affirmed the inconsistent Delaware judgment, thereby requiring Florida to give full faith and credit to the Delaware judgment and affording the Florida court no opportunity to decide for itself, in that very case, whether the Delaware trustee was an indispensable party.

It is no answer to say that the legislature cannot be sued. The California Supreme Court was a leader in abolishing the doctrine of sovereign immunity. *Muskopf v. Corning Hospital District,* 55 Cal.2d 211, 11 Cal.Rptr. 89, 359 P.2d 457 (1961). Also, the legislature has been a party in certain reapportionment cases decided by the California Supreme Court. *Legislature v. Reinecke,* 6 Cal.3d 595, 603, 99 Cal.Rptr. 481, 492 P.2d 385 (1972); *Legislature v. Reinecke,* 7 Cal. 3d 92, 93, 101 Cal.Rptr. 552, 496 P.2d 464 (1972); *Legislature v. Reinecke,* 10 Cal.3d 396, 110 Cal. Rptr. 718, 516 P.2d 61 (1973).

Nor would there be any merit to a contention that petitioners cannot urge violation of the federal due process clause on the ground they are not "persons" within the meaning of those clauses. The two county

officers included among the petitioners are certainly "persons". Further, this Court has often recognized that in proper cases governmental entities may assert rights of persons for whom they act as *parens patriae.* (See review of cases in *Hawaii v. Standard Oil Co.,* 405 U.S. 251, 257-259.) Also, in *Pierce v. Society of Sisters,* 268 U.S. 510 (1924) this Court held an Oregon compulsory public education law unconstitutional, primarily because of its impact on the rights of pupils and their parents asserted only by the owners of private schools.

One reason given by the Serrano II opinion for refusing to treat the lawmakers as indispensable parties was that to do so "would indeed be to 'thwart rather than accomplish justice.'" (Serrano II, Appendix A, Appendix, p. 32.) This of course assumes that the Serrano II decision, arrived at without hearing from the lawmakers, accomplishes rather than thwarts justice.

But it is far from clear that the 4-3 Serrano II decision accomplishes justice.

This is *not* a school financing case in which the defendants offered local fiscal control simply as an excuse for the status quo, as Mr. Justice Marshall believed Texas was doing, in *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, 127 (1973). In this case the *plaintiffs* came forward as the "real champions of local fiscal control"[16] and the California Supreme Court acknowledged that the California Constitution mandates that the school financing system allow "for local decision as to the level of school expenditures."[17]

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[16]Respondents' Brief in Serrano II, p. 217.
[17]Serrano II, Appendix A, Appendix, p. 59.

Instead, this is a case in which the defendants proposed that the courts, upon acquiring jurisdiction over the legislature and the governor, could properly undertake the responsibility of assuring a full measure of equality of educational opportunities within the framework of a system which must allow for local fiscal control. Defendants pointed out that the two constitutionally protected values—equality of educational opportunities and local fiscal control—pose a dilemma in designing and monitoring a school financing system. (Allowing local fiscal control results inexorably in differing expenditure levels among the districts.) Defendants noted that the dilemma could be resolved, logically, only by giving each of these constitutional values the relative weight it deserves. This could be done by assuring that a very large proportion of total statewide revenues for schools is devoted to serving equality of educational opportunities while only a correlatively small proportion is devoted to serving local fiscal control. Suppose, for example, the relative values chosen by the court were 90% for equal schooling and 10% for local fiscal control. If the state average expenditure level were $1000 per pupil, the proposed constitutional test would require that the most disadvantaged district (in terms of the ability and willingness of its taxpayers to raise local supplementing funds) would have at least $900 per pupil, plus its local supplements. If the community characteristics of this most disadvantaged district were such that it had 1/3 the average "power" to raise local supplements, an average tax effort in exercising its power would yield it 1/3 the average local supplements of $100, or $33, giving it a total of $933 per pupil, only 6 2/3%. short of the $1000 average.

Under this proposed "optimum balance" test,[18] the system could be easily monitored by the legislature and the courts so as to assure that an optimum balance between equal schooling and local fiscal control is achieved and maintained over the years. Failure of the legislature in any year to provide levels of state support which are nearly adequate, as perceived by the school boards, parents and taxpayers of the districts throughout the state, would inevitably result in their providing disproportionately large local supplements, providing a clear indication of denial of a full measure of equal educational opportunities.[19] In that event the "optimum balance" test would clearly indicate the need for legislative—or even judicial—restoration of the optimum balance. This test would thus assure full measures of equality, and even adequacy, of educational opportunities, as measured by per-pupil expenditures, within the framework of a system which must allow for local fiscal control.

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[18]This test was suggested by a nationally recognized school-finance scholar. Dr. Erick Lindman, then Professor, Graduate School of Education, University of California at Los Angeles. The "optimum balance" test would work hand-in-glove with the "variable standard of review" approach to equal protection analysis advocated by Justice Marshall in his *Rodriguez* dissent, 411 U.S. 1, at 99-111, an approach adopted by the highest courts of New Jersey and Oregon. *Robinson v. Cahill*, 62 N.J. 473, 492, 303 A.2d 273, 282 (1973); *Olsen v. State, Ore.*, 554 P.2d 139, 145 (1976).

[19]Thus, when Serrano I was decided in 1971, state support levels were woefully inadequate as shown by the fact that universally-available foundation program funds and categorical aids accounted for only 76.4% of total district revenues, with local supplements accounting for the remaining 23.6%. The legislative response to Serrano I, SB 90 and AB 1267, in its first year of operation, operated to reduce local supplements to about 10.4% because of dramatically increased foundation programs and categorical aids, which accounted for about 89.6% of total district revenues. Serrano II, Appendix A, Appendix, p. 35.

By way of contrast, the Serrano II decision places *no limit* on the exercise of local fiscal control—it simply prohibits one of many community characteristics —district "wealth"—from playing any significant role therein. The decision places *no limit* on the role to be played by the many other community characteristics which are indicia of the ability and willingness of a district's taxpayers to raise local supplements—characteristics such as family wealth and poverty levels, municipal overburden, ratio of public school children to total population, county assessment ratio, community cost-of-living index, families' educational aspirations as measured by percentage of professionals, college graduates, etc., to name a few.

Thus the Serrano II decision, in and of itself, provides no assurance of either equality or adequacy of educational opportunities. The decision, by simply purporting to neutralize the influence of one community characteristic (district "wealth") on district spending levels, leaving the remaining community characteristics with that much more influence on spending levels, simply requires a reshuffling of high-spending and low-spending districts, with all the chaos that involves for high-wealth districts which must cut back to lower spending levels.

There is no indication that this reshuffling of high-spending and low-spending districts will benefit the children of poor or minority-group families. The plaintiffs dropped their allegation that the system operated to the disadvantage of minority-group children, and made no attempt to show that it disadvantaged the children of poor families. What there is in the record indicates that poor children are just as likely to be

found in high-wealth districts as in low-wealth districts.[20] The Connecticut study referred to in *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1, at 23, correctly assesses the reason for this—the poor are often clustered around commercial and industrial areas, those same areas that provide the most attractive sources of property tax income for school districts. To this we would add that it is in those same areas that the highest municipal overburdens are often found. In California, the San Francisco Unified School District is a "wealthy" school district, about 2.7 times the average wealth, yet it contains more than its share of poverty-level and minority-group families, while shouldering a heavy municipal overburden. It is far from clear that Serrano II accomplishes rather than thwarts justice, when it is seen that Serrano II slashes the power of high-wealth districts to raise local supplements—simply because they are high-wealth districts—without regard to their other community characteristics which affect their power or need to raise local supplements.

Careful analysis of the California Supreme Court's reasoning process in Serrano I which resulted in the selection of "district wealth" as the villain in the school finance drama leads to only one conclusion—the rea-

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[20]The California State Department of Education's 1972 report, "California State Testing Program, 1969-70" [Defs, Ex. F] showed no significant correlation between Index of Family Poverty and Assessed Valuation per unit of average daily attendance of pupils. The correlation co-efficients were .03, -.03, and -.01 for the three types of districts. [Defs' Ex. F, pp. 571, 574, 577.] As explained in Exhibit F at page 567: "As a rule of thumb, the magnitude of a correlation co-efficient, whether positive or negative, can be interpreted as follows: .0-.2, insignificant; .3-.4, low; .5-.6, moderate; .7-8, substantial; and .9+, high."

soning was fallacious.[21] The Serrano II opinion declined to reanalyze its Serrano I analysis on this critical point, preferring to rest on the "law of the case" doctrine despite this Court's intervening holding to the contrary in *Rodriguez,* 411 U.S. 1. It can hardly be assumed that fallacious reasoning on the most critical point in the case has resulted in accomplishing rather than thwarting justice.

Also, it is far from clear that Serrano II's requirement of district-wealth-equalizing or "district-power-equalizing" provides a better solution to the school finance dilemma than does the optimum balance test

[21]Three fallacies are evident in the following critical paragraph in Serrano I: "More basically, however, we reject defendants' underlying thesis that classification by wealth is *constitutional* so long as the wealth is that of the district, not the individual. We think that discrimination on the basis of district wealth is equally *invalid*. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private commercial and industrial establishments. *Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.*" (Serrano I, 5 Cal.3d at 601, Appendix C, Appendix, pp. 118-119, emphasis added.) *First,* it poses the wrong question at that juncture—whether classification by wealth of a district is *constitutional* or *valid*—rather than the right question, whether district wealth is "suspect". *Second,* it assumes that the asserted justification of the system is that "district wealth" bears a rational relationship to a legitimate legislative objective, whereas the actually asserted justification is that the values inherent in local fiscal control bear such a relationship. *Third,* it proves too much, proving that *any* community characteristic which influences district spending levels and which is irrelevant to the quality of a child's education, is an unconstitutional, invalid or "suspect" classification. Since no such community characteristic is relevant to the quality of a child's education, the Court's proof requires rejection of "local fiscal control". This brings the Court's argument full-circle into contradiction with its Serrano II holding that "local fiscal control" is guaranteed to some degree by the California Constitution, §§20 and 21 of Article XIII.

proposed by the defendants. Surely the lawmakers charged by the state constitution with the duty of educating the children, should have been heard on these complex matters before the courts rendered their decision. Far more is at stake than the few days of suspension from school involved in *Goss v. Lopez,* 419 U.S. 134 (1975), in which this court held that a student threatened with suspension is entitled to a prompt hearing to satisfy due process requirements. Surely a substantial federal question is presented as to whether the millions of California children who stand to be adversely affected by the Serrano II decision were likewise entitled to be heard through their *parens patriae,* the California lawmakers charged with the duty of providing for their education.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX.

IN THE

Supreme Court of the United States

October Term, 1976
No. 76-1512

RICHARD M. CLOWES, Superintendent of Schools of the County of Los Angeles; HOWARD B. ALVORD, Treasurer and Tax Collector of the County of Los Angeles; LONG BEACH UNIFIED SCHOOL DISTRICT; EL SEGUNDO UNIFIED SCHOOL DISTRICT; BURBANK UNIFIED SCHOOL DISTRICT; BEVERLY HILLS UNIFIED SCHOOL DISTRICT; and SAN MARINO UNIFIED SCHOOL DISTRICT,

Petitioners,

vs.

JOHN SERRANO, JR., *et al.*,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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APPENDIX A.

Opinion of the California Supreme Court in "Serrano II". Reported in 18 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929.

[L.A. No. 30398. In Bank. Dec. 30, 1976.]

John Serrano, Jr., et al., Plaintiffs and Respondents, v. Ivy Baker Priest,* as State Treasurer, etc., et al., Defendants and Appellants; California Federation of Teachers, AFL-CIO, Intervener and Respondent; Beverly Hills Unified School District et al., Interveners and Appellants.

SUMMARY

In an action challenging the constitutionality of the California public school financing system, tried on remand after the Supreme Court had reversed a prior judgment of dismissal entered upon orders sustaining general demurrers, various interested parties were allowed to intervene on both sides, but the trial court declined defendants' suggestion that the Legislature and the Governor be joined as indispensable parties. In the prior decision the Supreme Court had held that if plaintiffs' allegations were sustained on trial, the financing system must be declared invalid as in violation of state and federal constitutional provisions guaranteeing the equal protection of the laws, but during the trial itself the holding with regard to the federal provisions was undercut by the United States Supreme Court, which ruled against Texas plaintiffs in a Fourteenth Amendment attack on a generally similar system in

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*Although neither the former state Treasurer (now deceased) nor the present holder of that office is a party to this appeal, we continue to use the title *Serrano v. Priest* for purposes of consistency and convenience.

that state. The trial court, following the law of the case, taking into consideration two new bills enacted into law during the pendency of trial proceedings, and supporting its decision by nearly 300 findings of fact, held that the California system still violated the state's, though not the federal, equal protection provisions. Indicating the nature of such violations, the court allowed six years for bringing the system into constitutional compliance, during which the existing system should continue, and retained jurisdiction so that any party might apply for appropriate relief in the event of noncompliance. Defendants' motion for new trial was denied. (Superior Court of Los Angeles County, No. C 938254, Bernard S. Jefferson, Judge.)

On appeal by certain defendants, as supplemented by briefs of several amici curiae, the Supreme Court affirmed. Rejecting defendants' contentions that the Legislature and the Governor were indispensable parties, and noting that the criteria used by the trial court in reaching its decision were those set forth in the law of the case as declared by the Supreme Court in its prior ruling on demurrer, the court held that, despite the admitted improvements of the recent legislation, the system suffered from the same basic shortcomings that were alleged to exist in the original complaint; the system allowed the availability of educational opportunity to vary as a function of the assessed valuation (per "average daily attendance" of students) of taxable property within a given district. For purposes of determining the validity of the school financing legislation under the equal protection provisions of the state Constitution, education was a fundamental interest and discrimination in educational opportunity on the basis of district wealth involved a suspect classification; therefore, the legislation was subject to strict judicial

scrutiny, and the state had the burden of showing a compelling state interest to justify such discrimination. This the state failed to do; the purported justification, namely, local control of fiscal and educational matters, was chimerical from the standpoint of districts less favored in terms of taxable wealth per pupil, and the recent legislation was insufficient to negate such inequities in the foreseeable future, primarily because of the continued availability of voted tax overrides. The court also rejected defendants' contention that other constitutional provisions, relating to school financing and educational improvement, specifically authorized the existing system, and held that in exercising its powers under such provisions the Legislature was obliged to act in a manner consistent with general constitutional limitations applicable to all legislation, including fundamental constitutional provisions guaranteeing the equal protection of the laws to all citizens of the state. (Opinion by Sullivan, J., with Wright, C. J., and Tobriner and Mosk, JJ., concurring. Dissenting opinion by Richardson, J. Separate dissenting opinion by Clark, J., with McComb, J., concurring.)

COUNSEL

John H. Larson, County Counsel, James W. Briggs and Donovan M. Main, Deputy County Counsel, for Defendants and Appellants and Interveners and Appellants.

Ronald A. Zumbrun, John H. Findley, H. Leroy Cannon, Roger J. Nichols, Leonard Siegel and Nichols & Rose as Amici Curiae on behalf of Defendants and Appellants and Interveners and Appellants.

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Levy, Koszdin & Woods and Henry R. Fenton for Intervener and Respondent.

Kronick, Moscovitz, Tiedmann & Girard, Edward J. Tiedmann and Mark Paul as Amici Curiae.

OPINION

SULLIVAN, J.—The instant proceeding, which involves a constitutional challenge to the California public school financing system, is before us for the second time. In 1971, we reversed a judgment of dismissal entered upon orders sustaining general demurrers and remanded the cause with directions that it proceed to trial (*Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241], hereafter cited as *Serrano I.*) In so doing we held that the facts alleged in plaintiffs' complaint were sufficient to constitute the three causes of action there set forth, and that if such allegations were sustained at trial, the state public school financing system must be declared invalid as in violation of state and federal constitutional provisions guaranteeing the equal protection of the laws.[1]

[1]The kernel of our holding was set forth as follows: "In sum, we find the allegations of plaintiffs' complaint legally sufficient and we return the cause to the trial court for further proceedings. We emphasize, that our decision is not a final judgment on the merits. We deem it appropriate to point out for the benefit of the trial couft on remand (see Code Civ. Proc., § 43) that if, after further proceedings, that court should enter final judgment determining that the existing system of public school financing is unconstitutional and invalidating said system in whole or in part, it may properly provide for the enforcement of the judgment in such a way as to permit an orderly transition from an unconstitutional to a constitutional system of school financing. As in the cases of school desegregation (see *Brown v. Board of Education* (1955) 349 U.S. 294 [99 L.Ed. 1083, 75 St.Ct. 753]) and legislative reapportionment (see *Silver v. Brown* (1965) 63 Cal.2d 270, 281 [46 Cal.Rptr. 308, 405 P.2d 132]), a determination that an existing plan of governmental operation denies equal protection does not necessarily require invalidation of past acts undertaken pursuant to that plan or an immediate implementation of a constitutionally valid substitute. Obviously, any judgment invalidating the existing system of public school financing should make clear that the existing system is to remain operable until an appropriate new system, which is not violative of equal protection of the laws, can be put into effect." (*Serrano I*, at pp. 618-619.)

Upon remand answers to the complaint were filed by all existing defendants[2] and certain school districts of the County of Los Angeles were allowed to intervene as defendants, adopting as their own the answers previously filed by the other county defendants.[3] The California Federation of Teachers, AFL-CIO, was permitted to intervene as a plaintiff on condition that its complaint adopt the essential allegations of the original complaint. The trial court declined to accept defendants' suggestion that the Legislature and the Governor be joined as indispensable parties.

Trial commenced on December 26, 1972. After more than 60 days of trial proceedings the court issued its "Memorandum Opinion Re Intended Decision" on

[2]The defendants at the time of the first appeal were the occupants of the state offices of Treasury, Superintendent of Public Instruction and Controller, and the Los Angeles County offices of tax collector, treasurer, and superintendent of schools.

[3]The intervening school districts were Burbank Unified, El Segundo Unified, Beverly Hills Unified, Long Beach Unified, San Marino Unified, Glendale Unified, and South Bay Union High School.

April 10, 1974, and on August 30 of the same year filed its findings of fact and conclusions of law, there being 299 of the former and 128 of the latter. Judgment was entered on September 3, 1974, and defendants' motion for a new trial was denied on October 28, 1974. This appeal followed.[4]

I

Our decision in *Serrano I*, which due to the then legal posture of the proceeding directed itself only to the sufficiency of allegations of the complaint to state a cause of action and contemplated full trial proceedings for the proof of such allegations, nevertheless attracted the immediate attention of the California Legislature. As a result the lawmakers passed two bills—Senate Bill No. 90 (S.B. 90) and Assembly Bill No. 1267 (A.B. 1267)—which, upon becoming law during the pendency of trial proceedings, brought about certain significant changes in the public school

[4]Two notices of appeal were filed in the trial court, one by the county defendants and the defendant-in-intervention school districts (see fn. 3, *ante*) and one by the then state Treasurer, Ivy Baker Priest. The remaining state defendants have not appealed. The appeals of the state Treasurer and defendants-in-intervention South Bay Union High School District and Glendale Unified School District were subsequently abandoned. Thus the only parties appellant are the county defendants and the remaining five intervening school districts.

With the permission of the court, briefs amicus curiae have been filed by defendant Wilson Riles, Superintendent of Public Instruction of the State of California; the Pacific Legal Foundation, San Francisco Unified School District; The Association of Concerned Teachers (ACT); The Childhood and Government Project (Earl Warren Legal Institute, Boalt Hall, University of Cal., Berkeley); The Education Finance & Governance Reform Project (Research Institute, Nairobi College, East Palo Alto); The California Taxpayers' Association; and the California School Finance Task Force (Graduate School of Public Policy, University of Cal., Berkeley). Jesse Unruh, the present state treasurer, has also filed a brief.

financing system then under judicial scrutiny. Recognizing this, all parties to the action thereupon entered into a stipulation that for purposes of trial the California system for the financing of public schools should be deemed to include all law applicable at the time of trial. This agreement was later incorporated as follows among the trial court's conclusions of law: "For purposes of this litigation, the California system of financing public schools, includes not only all pertinent provisions of the California Constitution, statutes, and administrative codes, and all pertinent provisions of federal statutes and regulations, but includes all modifications, amendments, and additions to the California statutes and administrative codes resulting from the California Legislature's enactment of those bills known as S.B. 90 and A.B. 1267." (See Stats. 1972, ch. 1406; Stats. 1973, ch. 208.)

In view of these developments we think it appropriate at this point, before undertaking a description of the particulars of the trial court's judgment, to review in some detail the specific nature of the changes in the financing system which were wrought by the Legislature following our decision.[5] Because our understanding of these changes depends in large part on an understanding of the system as it existed at the time of *Serrano I*, we begin by reiterating the description of that system, based on the allegations of the complaint and certain matters judicially noticed, which we set

[5]Following oral argument in this case the Legislature enacted and the Governor signed into law a school finance bill adding some $272 million to the state budget for these purposes. (Sen. Bill No. 1641, signed by the Governor on July 2, 1976.) This bill, of course, was not before the trial court, and we do not consider it today.

forth in our earlier opinion. Clarity of exposition dictates that the following excerpt be extensive.[6]

A. *The System Prior to S.B. 90 and A.B. 1267*

In *Serrano I*, we described the prior financing system as follows:

"We begin our task by examining the California public school financing system which is the focal point of the complaint's allegations. At the threshold we find a fundamental statistic—over 90 percent of our public school funds derive from two basic sources: (a) local district taxes on real property and (b) aid from the State School Fund.[7]

"By far the major source of school revenue is the local real property tax. Pursuant to article IX, section 6 of the California Constitution, the Legislature has authorized the governing body of each county, and city and county, to levy taxes on the real property within a school district at a rate necessary to meet the district's annual education budget. (Ed. Code, § 20701 et seq.) The amount of revenue which a district can raise in this manner thus depends largely on its tax base—i.e., the assessed valuation of real property within its borders. Tax bases vary widely throughout the state; in 1969-1970, for example, the assessed valu-

[6]For purposes of convenience we have renumbered the footnotes in the following excerpt from *Serrano I* in order to conform with the sequence of the instant opinion. Hereafter, unless otherwise indicated, all section references (including those in excerpts from *Serrano I*) are to the Education Code.

[7]California educational revenues for the fiscal year 1968-1969 came from the following sources: local property taxes, 55.7 percent; state aid, 35.5 percent; federal funds, 6.1 percent; miscellaneous sources, 2.7 percent. (Legislative Analyst, Public School Finance, Part. I, Expenditures for Education (1970) p. 5. Hereafter referred to as Legislative Analyst.)

ation per unit of average daily attendance of elementary school children[8] ranged from a low of $103 to a peak of $952,156—a ratio of nearly 1 to 10,000. (Legislative Analyst, Public School Finance, Part V, Current Issues in Educational Finance (1971) p. 7.)[9]

"The other factor determining local school revenue is the rate of taxation within the district. Although the Legislature has placed ceilings on permissible district tax rates (§ 20751 et seq.), these statutory maxima may be surpassed in a 'tax override' election if a majority of the district's voters approve a higher rate. (§ 20803 et seq.) Nearly all districts have voted to override the statutory limits. Thus the locally raised funds which constitute the largest portion of school revenue are primarily a function of the value of the realty within a particular school district, coupled with the willingness of the district's residents to tax themselves for education.

[8]Most school aid determinations are based not on total enrollment, but on 'average daily attendance' (ADA), a figure computed by adding together the number of students actually present on each school day and dividing that total by the number of days school was taught. (§§ 11252, 11301, 11401.) In practice, ADA approximates 98 percent of total enrollment. (Legislative Analyst, Public School Finance, Part IV, Glossary of Terms Most Often Used in School Finance (1971) p. 2.) When we refer herein to figures on a 'per pupil' or 'per child' basis, we mean per unit of ADA.

[9]Over the period November 1970 to January 1971 the legislative analyst provided to the Legislature a series of five reports which 'deal with the current system of public school finance from kindergarten through the community college and are designed to provide a working knowledge of the system of school finance.' (Legislative Analyst, Part I, *supra*, p. 1.) The series is as follows: Part I, Expenditures for Education; Part II, The State School Fund: Its Derivation and Distribution; Part III, The Foundation Program; Part IV, Glossary of Terms Most Often Used in School Finance; Part V, Current Issues in Educational Finance.

"Most of the remaining school revenue comes from the State School Fund pursuant to the 'foundation program,' through which the state undertakes to supplement local taxes in order to provide a 'minimum amount of guaranteed support to all districts. . . .' (§ 17300.) With certain minor exceptions,[10] the foundation program ensures that each school district will receive annually, from state or local funds, $355 for each elementary school pupil (§§ 17656, 17660) and $488 for each high school student. (§ 17665.)

"The state contribution is supplied in two principal forms. 'Basic state aid' consists of a flat grant to each district of $125 per pupil per year, regardless of the relative wealth of the district. (Cal. Const., art. IX, § 6, par. 4; Ed. Code, §§ 17751, 17801.) 'Equalization aid' is distributed in inverse proportion to the wealth of the district.

"To compute the amount of equalization aid to which a district is entitled, the State Superintendent of Public Instruction first determines how much local property tax revenue would be generated if the district were to levy a hypothetical tax at a rate of $1 on each $100 of assessed valuation in elementary school

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[10]Districts which maintain 'unnecessary small schools' receive $10 per pupil less in foundation funds. (§ 17655.5 et seq.)

Certain types of school districts are eligible for 'bonus' foundation funds. Elementary districts receive an additional $30 for each student in grades 1 through 3; this sum is intended to reduce class size in those grades. (§ 17674.) Unified school districts get an extra $20 per child in foundation support. (§§ 17671-17673.)

districts and $.80 per $100 in high school districts.[11] (§ 17702.) To that figure, he adds the $125 per pupil basic aid grant. If the sum of those two amounts is less than the foundation program minimum for that district, the state contributes the difference. (§§ 17901, 17902.) Thus, equalization funds guarantee to the poorer districts a basic minimum revenue, while wealthier districts are ineligible for such assistance.

"An additional state program of 'supplemental aid' is available to subsidize particularly poor school districts which are willing to make an extra local tax effort. An elementary district with an assessed valuation of $12,500 or less per pupil may obtain up to $125 more for each child if it sets its local tax rate above a certain statutory level. A high school district whose assessed valuation does not exceed $24,500 per pupil is eligible for a supplement of up to $72 per child if its local tax is sufficiently high. (§§ 17920-17926.)[12]

"Although equalization aid and supplemental aid temper the disparities which result from the vast variations in real property assessed valuation, wide differentials remain in the revenue available to individual districts

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[11]This is simply a 'computational' tax rate used to measure the relative wealth of the district for equalization purposes. It bears no relation to the tax rate actually set by the district in levying local real property taxes.

[12]Some further equalizing effect occurs through a special areawide foundation program in districts included in reorganization plans which were disapproved at an election. (§ 17680 et seq.) Under this program, the assessed valuation of all

(This footnote is continued on next page)

and, consequently, in the level of educational expenditures.[13] For example, in Los Angeles County, where plaintiff children attend school, the Baldwin Park Unified School District expended only $577.49 to educate each of its pupils in 1968-1969; during the same year the Pasadena Unified School District spent $840.19 on every student; and the Beverly Hills Unified School District paid out $1,231.72 per child. (Cal. Dept. of Ed., Cal. Public Schools, Selected Statistics 1968-1969 (1970) Table IV-11, pp. 90-91.) The source of these disparities is unmistakable: in Bald-

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the individual districts in an area is pooled, and an actual tax is levied at a rate of $1 per $100 for elementary districts and $.80 for high school districts. The resulting revenue is distributed among the individual districts according to the ratio of each district's foundation level to the areawide total. Thus, poor districts effectively share in the higher tax bases of their wealthier neighbors. However, any district is still free to tax itself at a rate higher than $1 or $.80; such additional revenue is retained entirely by the taxing district.

[13]Statistics compiled by the legislative analyst show the following range of assessed valuations per pupil for the 1969-1970 school year:

	Elementary	High School
Low	$ 103	$ 11,959
Median	19,600	41,300
High	952,156	349,093

(Legislative Analyst, Part V, *supra*, p. 7.)

"Per pupil expenditures during that year also varied widely:

	Elementary	High School	Unified
Low	$ 407	$ 722	$ 612
Median	672	898	766
High	2,586	1,767	2,414

(Id., at p. 8.)

"Similar spending disparities have been noted throughout the country, particularly when suburban communities and urban ghettos are compared. (See, e.g., Report of the National Advisory Commission on Civil Disorders (Bantam ed. 1968) pp. 434-436; U.S. Commission on Civil Rights, Racial Isolation in the Public Schools (1967) pp. 25-31; Conant, Slums and Suburbs (1961) pp. 2-3; Levi, *The University, The Professions, and the Law* (1968) 56 Cal.L.Rev. 251, 258-259.)

win Park the assessed valuation per child totaled only $3,706; in Pasadena, assessed valuation was $13,-706; while in Beverly Hills, the corresponding figure was $50,885—a ratio of 1 to 4 to 13. (*Id.*) Thus, the state grants are inadequate to offset the inequalities inherent in a financing system based on widely varying local tax bases.

"Furthermore, basic aid, which constitutes about half of the state educational funds (Legislative Analyst, Public School Finance, Part II, The State School Fund: Its Derivation, Distribution and Apportionment (1970) p. 9), actually widens the gap between rich and poor districts. (See Cal. Senate Fact Finding Committee on Revenue and Taxation, State and Local Fiscal Relationships in Public Education in California (1965) p. 19.) Such aid is distributed on a uniform per pupil basis to all districts, irrespective of a district's wealth. Beverly Hills, as well as Baldwin Park, received $125 from the state for each of its students.

"For Baldwin Park the basic grant is essentially meaningless. Under the foundation program the state must make up the difference between $355 per elementary child and $47.91, the amount of revenue per child which Baldwin Park could raise by levying a tax of $1 per $100 of assessed valuation. Although under present law, that difference is composed partly of basic aid and partly of equalization aid, if the basic aid grant did not exist, the district would still receive the same amount of state aid—all in equalizing funds.

For Beverly Hills, however, the $125 flat grant has real financial significance. Since a tax rate of $1 per $100 there would produce $870 per elementary student,

Beverly Hills is far too rich to qualify for equalizing aid. Nevertheless, it still receives $125 per child from the state, thus enlarging the economic chasm between it and Baldwin Park. (See Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test of State Financial Structures* (1969) 57 Cal.L.Rev. 305, 315.)" (*Serrano I*, at pp. 591-595.)

It was the above-described system, then, which concerned us in *Serrano I*. If, we held, the allegations of the complaint upon trial were found to be true, thus establishing that the system described was the one actually existing in California, that system would be invalid as in violation of state and federal equal protection provisions. The Legislature, apparently recognizing the likelihood of such a finding, decided not to await the outcome of such proceedings but to address itself immediately to the problem. (For an early comment on the practical economics confronting the Legislature in its response to *Serrano I* see Post & Brandsma, *The Legislature's Response to Serrano v. Priest*, 4 Pacific L.J. 28.) It is to the changes resulting from these legislative efforts that we now proceed to direct our comments.

B. *The New System*

The changes brought about by the passage of S.B. 90 and A.B. 1267, while significant, did not purport to alter the basic concept underlying the California public school financing system. That concept, which we may refer to as the "foundation approach," undertakes in general to insure a certain guaranteed dollar amount for the education of each child in each school district, and to defer to the individual school district for provision of whatever additional funds it deems

necessary to the furtherance of its particular educational goals. As indicated in the foregoing excerpt, the mechanisms by which this concept was implemented prior to the adoption of S.B. 90 and A.B. 1267 were basically four: (1) basic aid, (2) equalization aid, (3) supplemental aid, and (4) tax rate limitations and overrides. The new law retained three of these, the element of supplemental aid (see text accompanying fn. 12, *ante*) being discontinued. The basic aid component remained the same, i.e., $125 per ADA. Thus it was fundamentally through adjustments and alterations in the remaining two areas—equalization aid and tax rate limitations and overrides—that the Legislature sought to bring the system into constitutional conformity.[14]

Perhaps the most dramatic aspect of the new law was a substantial increase in the foundation level. For the fiscal year 1973-1974 this figure, which constitutes the minimum amount per pupil guaranteed to each district by the state, was in general raised for elementary school districts from the previous level of $355 per ADA to the sum of $765 per ADA, and for high school districts from $488 to $950 per ADA. (§§ 17656, 17665.) Corresponding increases were provided

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[14]Although the following text confines itself to a description of the basic operational features of the new law from the standpoint of the ongoing foundational approach on which it is based, it is appropriate to note at this point that S.B. 90 and A.B. 1267 also introduced certain modifications of a categorical nature. The most important of these was the establishment of the Educationally Disadvantaged Youth Programs (§ 6499.230 et seq.) and of the Early Childhood Education Programs (§ 6445 et seq.). The former program authorized $82 million in state assistance, to be awarded on a project basis to districts with a heavy incidence of family poverty, bilingualism, and pupil transiency, while the latter authorized $25 million for 1973-1974 and $40 million for 1974-1975 also on a project basis, to restructure primary education in grades K through 3.

for small schools (see fn. 10, *ante*), and areawide foundation programs (fn. 12, *ante*) were retained. Provision was also made to offset the so-called "slippage factor," which has been the result of yearly increases in the assessed valuation of real property within the districts (leading to an increase in the amount of local contribution through application of the "computational tax rate" (fn. 11, *ante*) and a corresponding decrease in state contribution). Thus, a yearly increase in the foundation level of approximately 7 percent for the first three years and 6 percent thereafter was prescribed. (§ 17301, former subd. (e); see present § 17669.) At the same time, however, the "computational tax rate" was raised from $1 to $2.23 at the elementary level and from $0.80 to $1.64 at the high school level. (§ 17702.)

The second major aspect of the new program involved the creation of "revenue limits," or limitations on maximum expenditures per pupil in each school district exclusive of state and federal categorical support and of revenue generated by permissive override taxes. (§ 20902 et seq.) These provisions, generally speaking, allowed a district without a voted override to levy taxes at a rate no higher than would increase its expenditures per pupil over 1972-1973 base revenues by a permitted yearly inflation factor.[15] A district

[15]For the year 1973-1974, several alternatives were provided for determining the allowable increase in expenditures:

(a) A district may add to the 1972-1973 revenue base per pupil a flat $70 inflation allowance, or a percentage thereof, or a district below the foundation program may instead move toward the foundation program at a maximum of 116 percent; or

(b) A district may add the unused portion of a voted override tax rate to the revenue limit computational tax rates, and use a $65 inflation allowance per pupil, or a percentage thereof, or a district below the foundation program may instead move toward the foundation program at a maximum of 115 percent; or

(c) A district may add to the 1972-1973 revenue base the unrestricted balances used to balance income to expenditures in 1972-1973, but not to exceed 3 percent of the total expenditures in certain expenditures classifications of the state general fund for 1972-1973, and use the $65 inflation allowance per pupil, or a percentage thereof, or a district below the foundation program may instead move toward the foundation program at a maximum of 115 percent.

having a school tax rate which produced revenues in excess of foundation levels would receive inflation adjustments which decreased in magnitude as those revenues rose above foundation levels. On the other hand, a district having base revenues which, when added to the full inflation allowance, did not reach the foundation level, could increase its revenues by up to 16 percent of the preceding year's revenue limit per ADA.

The combination of the foregoing rate limitation structure and the ever-advancing foundation levels would, it was contemplated, produce a phenomenon known as "convergence." While poorer districts could move with comparative rapidity toward the rising foundation levels, richer districts, due to the diminished inflation adjustment permitted them, would increase their revenue bases at a much slower rate.[16] This prognosis was complicated, however, by the fact that district revenue limits applied only to revenue generated by the maximum general purpose tax rate available

[16]The result of this process in many of the richer districts (barring tax rate overrides, to be discussed below) will be a reduction in the general purpose tax rate: To the extent that annual growth in assessed valuation in such districts increases the amount of revenue to be obtained under the existing tax rate to a sum in excess of the prior year's revenue limit plus the permitted inflation adjustment, the rate will have to be lowered.

to a district in the absence of voter approval. Such limitations might be exceeded as before (see text following fn. 9, *ante*) if a majority of the voters in the district voted an override (§ 20906). Permissive overrides (i.e., overrides which can be imposed without voter approval) were also authorized to raise revenue for certain special purposes, such as capital outlay.

II

With this background in mind we turn to a consideration of the trial court's findings and judgment.

As indicated above, the trial court issued voluminous and comprehensive findings in support of its judgment. While we do not here undertake to present a complete summary of those findings, especially as they duplicate what has been pointed out above, it is important for present purposes to indicate their substance as they relate to the effect and validity of the system as it now stands following the legislative alterations enacted after our decision in *Serrano I*.

A. *Findings of Fact*

The court found in substance as follows:

The California public school financing system following the adoption of S.B. 90 and A.B. 1267 continues to be based upon the foundation concept. Although there have been substantial increases in foundation levels, those increases, considered alone, do not eliminate any of the unconstitutional features which existed at the time of *Serrano I*. The retention of the basic-aid element in the foundation program, for example, continues to have an anti-equalizing effect by benefitting only those districts not eligible for equalization aid. Moreover, basic-aid districts continue to be favored

over equalization-aid districts insofar as they may reach the foundation level with a tax rate less than the computational rate or by using the computational rate raise revenue in excess of the foundation level.

The revenue limit feature of the new law has similarly serious defects. By taking 1972-1973 revenues as its base figure, it perpetuates inequities resulting from property tax base differentials. More importantly, it will allow total "convergence" between high-spending revenue limits and rising foundation levels only after many, perhaps as many as 20, years—*even assuming no voted overrides*. After five years of functioning—again assuming that no voted overrides occur, many high-wealth, high-spending districts will still be spending two to three times more per pupil than many low-wealth districts are able to spend. Even when the "convergence" has run its course, there will continue to be a substantial inequality between basic-aid and equalization-aid districts, again assuming no voted overrides, due to the fact that the former districts will be able to achieve the foundation level at a tax rate which is less than the computational rate. Thus, to the extent that equal tax rates can produce differing expenditure levels, or that equal expenditure levels can be produced by differing tax rates, the system will continue to generate school revenue in proportion to the wealth of the individual district.[17]

[17]To illustrate, assume for a given district a $1,000 per ADA foundation level and a $3 per $100 computational tax rate. Assume further that one district has an assessed valuation of $50,000 per ADA while another has an assessed valuation of one-third that, or $16,667. In the first district the application of the computational tax rate will produce $1,500 per ADA, while in the second it will produce only $500 per ADA. The first district would not be entitled to equalization aid

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This potential disparity is exacerbated by the continued availability of voted overrides pursuant to section 20906. The passage of such overrides by high-wealth school districts would operate to nullify the contemplated "convergence" effect sought to be achieved by increased equalization aid and the imposition of revenue limits. The operation of the latter feature, in combination with continuing inflation, will make it impossible for high-wealth, high-spending districts to maintain the present quality of their programs, and therefore such districts will have a great incentive to vote tax rate overrides because even a slight rate increase in such districts will raise substantial revenues. In the districts having a relatively low assessed valuation per pupil, on the other hand, the incentive to vote such overrides will be less, for only a substantial increase in the tax rate will be sufficient to produce substantial additional revenues. As a result, the extent of local control

but would still receive the $125 per ADA basic aid payment. The second district would be entitled to equalization aid in the amount of $375 per ADA—i.e., the figure by which the sum of the amount available under the computational rate ($500 per ADA) and the basic aid payment ($125 per ADA) is exceeded by the foundation level ($1,000 per ADA), but in order to spend at the foundation level it would have to tax at the computational rate. If it wished to exceed the foundation level, it would be required to tax at a rate (up to the allowable limit) in excess of that rate.

The richer district, on the other hand, would be able to maintain the foundation level of expenditure by taxing at a mere $1.75 rate (i.e., that percent of $50,000 which when added to the basic aid allowance yields $1,000 per ADA). If applicable revenue limits allowed it to tax at the full computational rate (i.e., that rate at which the poorer district would be required to tax merely in order to achieve the foundation level) it would have the sum of $1,625 per ADA ($1,500 per ADA plus the basic aid payment of $125 per ADA)—or 1⅝ the amount available to the poorer district—at its disposal.

[This example, although not explicitly contained in the findings of the trial court, is based upon them.]

(i.e., "the opportunity to go above the foundation program level in pursuit of a higher quality program") will continue to be a function of district wealth under the new law.

The effect of disparities in district wealth also continues to be felt in the area of capital outlay. Permissive override taxes for this purpose, authorized by the new law for the repayment of bonded indebtedness and state aid loans, generate more revenue at a given tax rate in districts with a high assessed valuation per pupil than in districts with lower assessed valuation per pupil. Moreover, wealthier districts, being generally able to generate sufficient funds for capital outlay purposes within their bonding capacities, are often not required to levy permissive override taxes for the payment of state aid loans, which is the only source of assistance for districts whose bonding capacity is insufficient to finance needed capital improvements.

Municipal tax overburden, which "refers to high property tax rates for other governmental services than education," is a phenomenon of low-wealth, low-spending districts as well as high-wealth, high-spending districts. The problems associated with this phenomenon—such as vandalism, bilingualism, old buildings, disadvantaged youth, and poverty—are present in all such districts, but the wealthier districts from the point of view of assessed valuation per pupil are better able to respond to such problems than the poorer districts.

Similarly, the presence of small districts, which require greater expenditures because of "diseconomies of scale," is not confined to wealthier districts, and wealth differences among such districts create substantial disparities in both tax rates and expenditures.

While federal revenue grants to school districts in which federal tax-exempt facilities are located must be considered in evaluating wide disparities in assessed wealth per pupil, the availability of such revenue under Public Law 81-874 has been substantially curtailed, accounts for only a negligible amount of total educational revenue in California, and affects only a small number of districts. Even among such districts wide variations in assessed wealth create inequity in tax rates and spending levels.

In view of all of the foregoing it is clear that substantial disparities in expenditures per pupil resulting from differences in local taxable wealth will continue to exist under S.B. 90 and A.B. 1267. The reason for this is that essentially local wealth is the principal determinant of revenue, that high wealth districts do not need to make the same tax effort as low wealth districts in order to reach, let alone exceed, the level of the foundation program and that in this setting, basic aid becomes anti-equalizing and "convergence" of doubtful achievement.[18]

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[18]The court found that: "Substantial disparities in expenditures per pupil from district to district that are the result of differences in local taxable wealth will continue to exist under S.B. 90 and A.B. 1267 in that:

"(a) High-wealth, basic-aid districts do not make the same tax effort to reach the foundation program as do low-wealth, equalization-aid districts.

"(b) Above the foundation program, local wealth is the primary determinant of the amount of revenue generated for a given tax rate.

"(c) The amount of revenue from permissive override taxes is solely determined by the amount of wealth available to a school district.

"(d) The amount of revenue from voted override taxes is solely determined by the amount of wealth within a particular school district.

"(e) Low-wealth districts are denied an equal opportunity to exceed the foundation program by utilizing voted overrides under Section 20906.

There exist several alternative potential methods of financing the public school system of this state which would not produce wealth-related spending disparities. These alternative methods, which are "workable, practical and feasible," include: "(1) full state funding, with the imposition of a statewide property tax; (2) consolidation of the present 1,067 school districts into about five hundred districts, with boundary realignments to equalize assessed valuations of real property among all school districts; (3) retention of the present school district boundaries but the removal of commercial and industrial property from local taxation for school purposes and taxation of such property at the state level; (4) school district power equalizing[,] which has as its essential ingredient the concept that school districts could choose to spend at different levels but for each level of expenditure chosen the tax effort would be the same for each school district choosing such level whether it be a high-wealth or a low-wealth district; (5) vouchers; and (6) same combination of two or more of the above."

Substantial disparities in expenditures per pupil among school districts cause and perpetuate substantial disparities in the quality and extent of availability of educational opportunities. For this reason the school financing system before the court fails to provide equality of treatment to all the pupils in the state. Although an equal expenditure level per pupil in every district is not educationally sound or desirable because of differ-

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"(f) Revenue from local permissive taxes to repay local bonded indebtedness depends upon local wealth.

"(g) Basic aid is anti-equalizing, actually widening the gap between low-wealth and high-wealth districts.

"(h) Convergence of revenue limits with the foundation program occurs slowly, and may never occur as a result of the voted override provision."

ing educational needs, equality of educational opportunity requires that all school districts possess an equal ability in terms of revenue to provide students with substantially equal opportunities for learning. The system before the court fails in this respect, for it gives high-wealth districts a substantial advantage in obtaining higher quality staff, program expansion and variety, beneficial teacher-pupil ratios and class sizes, modern equipment and materials, and high-quality buildings.

There is a distinct relationship between cost and the quality of educational opportunities afforded. Quality cannot be defined wholly in terms of performance on statewide achievement tests because such tests do not measure all the benefits and detriments that a child may receive from his educational experience. However, even using pupil output as a measure of the quality of a district's educational program, differences in dollars do produce differences in pupil achievement.

B. *Conclusions of Law and Judgment*

Although we consider it unnecessary to set out a comprehensive review of the trial court's 128 conclusions of law, the most fundamental of those conclusions were incorporated into the judgment, which we now describe.

The trial court held that the California public school financing system for elementary and secondary schools as it stood following the adoption of S.B. 90 and A.B. 1267, while not in violation of the equal protection clause of the Fourteenth Amendment to the federal Constitution,[19] was invalid as in violation of former

[19]This conclusion was based on the decision of the United States Supreme Court in *San Antonio School District v. Rodriguez* (1973) 411 U.S. 1 [36 L.Ed.2d 16, 93 S.Ct. 1278], wherein the high court—in a decision subsequent to *Serrano I*—held that the Texas public school financing system, which

article I, sections 11 and 21, of the California Constitution (now art. IV, § 16 and art. I, § 7 respectively; see and compare *Serrano I, supra,* at p. 596, fn. 11), our state equal protection provisions.[20] Indicating the respects in which the system before it was violative of our state constitutional standard,[21] the

like the California system is based on the foundational concept, was not in violation of the federal equal protection provision. In so concluding, a majority of the high court held inter alia that education was not a "fundamental interest" entitled to strict scrutiny under the federal provision because the right to education was not explicitly or implicitly guaranteed by the terms of the Constitution. (*Id.* at pp. 33-34, 60-62 [36 L. Ed.2d at pp. 43, 44, 58-60].) Proceeding to examine the Texas system under the less stringent standard applicable to cases not demanding strict scrutiny, the majority went on to conclude that the system in question rationally furthered the legitimate state purpose or interest in local control of education. (*Id.* at pp. 44-55, 62 [36 L.Ed.2d at pp. 49-56, 59, 60].)

[20]The trial court, using by analogy the *Rodriguez* majority's standard for the determination of whether the interest affected by the classification in question was "fundamental" (thus requiring strict scrutiny reviews), concluded that the interest of children in education was explicitly and implicitly protected and guaranteed by the terms of the *California* Constitution. Applying the strict scrutiny test, it concluded that the California system was not necessary to the accomplishment of any compelling state interest and was therefore invalid.

The court further held that "[t]he school financing system for the State of California violates the equal-protection provisions of the California Constitution even under the lesser constitutional standard of rational relationship."

[21]The indicated portions of the judgment provided:

"3. That the following features of said California Public School Financing System, including the SB 90 and AB 1267 legislation pertaining thereto, are violative of said equal-protection-of-the-laws provisions of the California Constitution:

"(a) The basic aid payments of $125.00 per pupil to high-wealth school districts.

"(b) The right of voters of each school district to vote tax overrides and raise unlimited revenues at their discretion.

"(c) Wealth-related disparities between school districts in per-pupil expenditures, apart from the categorical aids special needs programs, that are not designed to, and will not reduce the

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court set a period of six years from the date of entry of judgment[22] as a reasonable time for bringing the system into constitutional compliance; it further held and ordered that the existing system should continue to operate until such compliance had been achieved. The judgment specifically provided that it was not to be construed to require the adoption of any particular system of school finance, but only to require that the plan adopted comport with the requirements of state equal protection

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insignificant differences, which mean amounts considerably less than $100.00 per pupil, within a maximum period of six years from the date of entry of this Judgment.

"(d) Wealth-related variations in tax rates between school districts that are not designed to, and will not reduce to nonsubstantial variations within the same maximum six-year period set forth in subparagraph (c) above for the equalization of per-pupil expenditure levels.

"4. That wealth-related, per-pupil expenditure disparities between school districts which are violative of said equal-protection-of-the-laws provisions of the California Constitution include, but are not limited to, the following:

"(a) High-wealth, basic-aid school districts do not make the same tax effort to reach the foundation-program levels as do low-wealth, equalization-aid school districts.

"(b) Above the foundation-program levels, local property wealth is the primary determinant of the amount of revenue generated for a given tax rate.

"(c) The amount of revenue derived from override taxes is determined solely by the amount of taxable property wealth within a particular school district.

"(d) Low-wealth school districts are denied an equal opportunity to exceed the foundation-program levels by utilizing voted overrides under Section 20906 of the Education Code.

"(e) The amount of revenue derived from permissive override taxes is determined solely by the amount of taxable property wealth within a particular school district.

"(f) Unused voted tax overrides are used to determine maximum school district revenue limits under the SB 90 and AB 1267 legislation."

[22]The trial court had found as a fact that "Present disparities in expenditures per pupil among districts that are the result of differences in local district taxable wealth can be efficiently and effectively eliminated within six years."

provisions. Finally, the trial court retained jurisdiction of the action and over the parties "so that any of such parties may apply for appropriate relief in the event that relevant circumstances develop, such as a failure by the legislative and executive branches of the state government to take the necessary steps to design, enact into law, and place into operation, within a reasonable time from the date of entry of this Judgment, a California Public School Financing System for public elementary and secondary schools that will fully comply with the said equal-protection-of-the-law provisions of the California Constitution."

III

Defendants advance three substantive contentions on appeal.

First, it is urged that the trial court employed inappropriate criteria insofar as it focussed on the notion of so-called "fiscal neutrality" to the exclusion of other factors relevant to its determination. If the trial court had employed appropriate criteria, it is suggested, the system as improved by S.B. 90 and A.B. 1267 would have been seen to be free from constitutional objection on equal-protection grounds.

Second, defendants urge that an improper legal standard of equal protection review was utilized. The proper standard, it is contended, even under our state constitutional provisions, is that requiring no more than a rational relationship, critically analyzed, between the financing method chosen and some legitimate state purpose.

Third, and assuming that the financing system before the court is to some extent inconsistent with state constitutional provisions guaranteeing the equal pro-

tection of the laws, it is urged that those provisions are to that extent in conflict with other provisions of the state Constitution and, in accordance with the principle of consistency in constitutional interpretation, should be made to yield *pro tanto* in order to avoid such conflict.

IV

Before taking up the foregoing contentions, we first dispose of a preliminary procedural matter. Defendants urge that the trial court was without jurisdiction to proceed in this matter because two allegedly indispensable parties—the Legislature and the Governor—were not joined. (See Code Civ. Proc., § 389.) It is pointed out that "the operative and directory provisions" of the judgment "are addressed solely to the Legislative and Governor," and that the parties defendant in the action lack all power to bring about the relief sought by plaintiffs and awarded by the trial court—i.e., the restructuring of the state public school financing system in a manner which will comply with provisions of our state Constitution guaranteeing equal protection of the laws. Reference is made to certain legislative reapportionment cases, notably *Silver v. Brown* (1965) 63 Cal.2d 270 [46 Cal.Rptr. 308, 405 P.2d 132], and to the fact that the Governor and the members of the Legislature were there made parties. To do otherwise in this case, it is urged, "would deny [the] people who created this financing system through their elective representatives of their day in Court . . ."

This contention is based on several misconceptions and inaccurate statements of the record. First, it is clear that the trial court—wholly cognizant of the well-established principle, rooted in the doctrine of separation of powers (Cal. Const., art. III, § 3), that

the courts may not order the Legislature or its members to enact or not to enact,[23] or the Governor to sign or not to sign,[24] specific legislation — by no means addressed the "operative and directory provisions" of its judgment to the Legislature and Governor. On the contrary it simply declared that the public school financing system before it, which was administered by the parties defendant, was in violation of state constitutional provisions guaranteeing equal protection of the laws. The trial court also indicated that it would retain jurisdiction over the matter so that any party might apply for "appropriate relief"[25] in the event that the lawmakers and the Governor had failed within a reasonable time, set by the judgment at six years, "to take the necessary steps to design, enact into law, and place into operation" a system which would comply with those provisions. However, it explicitly and properly refrained from issuing directives to the lawmakers and the chief executive, stating in its judgment: ". . . [T]his judgment is not intended to require, and is not to be construed as requiring, the adoption of any

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[23]See *French v. Senate* (1905) 146 Cal. 604, 606-607 [80 P. 1031]; *Myers v. English* (1858) 9 Cal. 341, 349; *California State Employees' Assn. v. State of California* (1973) 32 Cal.App.3d 103, 108-109 [108 Cal.Rptr. 60]; *cf. Igna v. City of Baldwin Park* (1970) 9 Cal.App.3d 909, 915 [88 Cal.Rptr. 581]; *Monarch Cablevision, Inc. v. City Council* (1966) 239 Cal.App.2d 206, 211 [48 Cal.Rptr. 550]; *City Council v. Superior Court* (1960) 179 Cal.App.2d 389, 394-395 [3 Cal.Rptr. 790].

[24]See *Jenkins v. Knight* (1956) 46 Cal.2d 220, 223 [293 P.2d 6]; *Harpending v. Haight* (1870) 39 Cal. 189, 208; *California State Employees' Assn. v. State of California, supra,* 32 Cal.App.3d 103, 109.

[25]The conclusions of law issued by the court clearly indicate that the primary relief contemplated, to be invoked only after the passage of a "reasonable time," is an injunction prohibiting the defendant state officials from operating an unconstitutional school financing system.

particular plan or system for financing the public elementary and secondary schools of the state. . . ."

Secondly, as the reapportionment cases themselves indicate, it is the general and long-established rule that in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant. (See *Yorty v. Anderson* (1963) 60 Cal.2d 312, 317-318 [33 Cal.Rptr. 97, 384 P.2d 417], and cases there cited; cf. *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1 [112 Cal.Rptr. 786, 520 P.2d 10]; *City of Carmel-by-the-Sea v. Young* (1970) 2 Cal.3d 259 [85 Cal.Rptr. 1, 466 P.2d 225, 37 A.L.R.3d 1313].) The fact that in the reapportionment context the Legislature and its members may also be considered proper parties stems from the direct institutional interest of those parties in the determination. (See and cf.[26] *Silver v. Jordan* (S.D. Cal. 1964) 241 F.Supp. 576, 579, affirmed (1965) 381 U.S. 415 [14 L.Ed.2d 689, 85 S.Ct. 1572]; *Minnesota State Senate v. Beens* (1972) 406 U.S. 187, 194 [32 L.Ed.2d 1, 8, 92 S.Ct. 1477].) In the instant case, on the other hand, as in the great majority of cases brought against state administrative officers to challenge the constitutionality of a statute or statutes administered by them, the Legislature and the Governor lack any similar interest. The interest they do have—that of lawmakers concerned with the validity of statutes enacted by them—is not of the immediacy and directness requisite to party status; it may thus be fully

[26]Although our California statute governing intervention (Code Civ. Proc., § 387) is not in all respects identical to the parallel federal rule (Fed. Rules Civ. Proc., rule 24), the requirement of significant interest is common to both.

and adequately represented by the appropriate administrative officers of the state.

Moreover, even should the Legislature and the Governor be considered *proper* parties to this litigation (i.e., parties subject to permissive joinder or capable of intervention), it is clear that they could in no case be considered *indispensable* parties, or parties without whom the action could not fairly proceed. Indispensable parties, as we said in *Bank of California v. Superior Court* (1940) 16 Cal.2d 516, at page 521 [106 P.2d 879], are parties "whose interests, rights, or duties will inevitably be affected by any decree which can be rendered in the action. Typical are the situations where a number of persons have undetermined interests in the same property, or in a particular trust fund, and one of them seeks, in an action, to recover the whole, to fix his share, or to recover a portion claimed by him. The other persons with similar interests are indispensable parties. The reason is that a judgment in favor of one claimant for part of the property or fund would necessarily determine the amount or extent which remains available to the others. Hence, any judgment in the action would inevitably affect their rights." Manifestly, the Legislature and the Governor have no interest in this proceeding which is remotely comparable to that contemplated by this language.

Moreover, as we also said in the *Bank of California* case, in dealing with the doctrine of indispensable and necessary parties "we should . . . be careful to avoid converting a discretionary power or a rule of fairness in procedure[27] into an arbitrary and burden-

[27]Section 389 of the Code of Civil Procedure, enacted in 1971 to conform ours to the federal practice, describes an indispensable party as one which "in equity and good conscience" the court deems essential to the determination of the action. (See Fed. Rules Civ. Proc., rule 19.)

some requirement which may thwart rather than accomplish justice." (16 Cal.2d at p. 521; see also *Muggill v. Reuben H. Donnelley Corp.* (1965) 62 Cal.2d 239, 241 [42 Cal.Rptr. 107, 398 P.2d 147].) In the instant case it is quite clear that no governmental interest has lacked for able and willing advocates in the absence of the Legislature and Governor as parties. This case has been well-known to those entities since its inception, yet they have at no point sought intervention or indicated any interest in doing so. Even more significantly, this is a matter whose resolution has been anxiously awaited by the parties and the public at large for more than seven years. In light of these considerations we are convinced that to invoke the doctrine of indispensability, and thus require the renewal of trial proceedings on this ground, would indeed be to "thwart rather than accomplish justice."

V

Defendants' first substantive contention, as indicated above, concerns the criteria employed by the trial court in its examination of the school finance system before it. The trial court, it is urged, by confining its inquiry to the matter of wealth-related disparities among the several school districts, improperly ignored certain other factors—for example, the "adequacy" and "equality" of educational programs[28]—and thus oversimplified

[28]Defendants single out for attack the following passage from the trial court's memorandum opinion: "What the *Serrano* court imposed as a California constitutional requirement is that there must be uniformity of treatment between the children of the various school districts in the State because all the children of the State in public schools are persons similarly circumscribed. The equal-protection-of-the-laws provisions of the California Constitution mandate nothing less than that all such persons shall be treated alike. If such uniformity of treatment were

the problem before it. This point of view, it is claimed, is reflected in the terms of the judgment itself. (See par. 4 of the judgment set forth *ante* in fn. 21.) The application of proper criteria, defendants argue, would require the trial court to look not merely to the operation of particular "mechanisms" utilized by the system but to the overall results achieved in terms of "a fair balance, statewide, between equal educational opportunities and local supplementation." To do otherwise, it is urged, is to adopt a nearsighted approach which, in its zeal to perfect one "mechanism" in the system, imposes a standard of "neutrality" upon all its other elements. "Municipal overburden," with its attendent problems, also covered by trial court findings, is cited by defendants as a particular example of an area requiring not "neutrality" but special efforts according to the circumstances.[29]

Defendants offer two formulations of what they consider to be adequate criteria for the assessment of the public school financing system. In their opening brief they suggest a tripartite test which is less an alternative to the "fiscal neutrality" approach of the trial court than what turns out to be defendants' description of the system at issue from the standpoint of

to result in all children being provided a low-quality educational program, or even a clearly *inadequate* educational program, the California Constitution would be satisfied. This court does not read the *Serrano* opinion as requiring that there is any constitutional mandate for the State to provide funds for each child in the State at some magic level to produce either an adequate-quality educational program or a high-quality educational program. It is only a disparity in treatment between equals which runs afoul of the California constitutional mandate of equal protection of the laws."

[29]Several of the briefs amicus curiae filed herein also evince serious concern for the problem of "municipal overburden."

its overall effect.[30] Perhaps realizing the unwieldiness of this formulation, they proceed in their reply brief to state the apparent kernel of their position in more straightforward terms: of the three types of revenues available to school districts—foundation funds, categorical aids, and local supplements—only the third, it is asserted, is "unequalized," or dependent upon taxable district wealth and the capacity or willingness of the voters to pay additional school taxes. The percentage of total state school district revenues represented by these "unequalized" revenues, defendants assert, "provides an objective measure of the relative weights given by the system in a given year to equal educational opportunities and local participation in school fiscal affairs." So long as this figure is sufficiently low—defendants suggest 10 percent as an appropriate figure—the relevant competing interests are adequately accommodated. This, then, is the "optimum balance" criterion which defendants would suggest that we utilize in preference to the "fiscal neutrality" approach of the trial court. If we were to do so, it is asserted, we would find that the subject system, as improved by the

[30]The three criteria suggested are these: "I. The system must assure that every school district in the State has access, without excessive local taxation, to sufficient general fund revenues to finance the commonly-shared needs of school districts as perceived by the State, and to such categorical aids as the State and Federal governments perceive to be required to meet special, uncommon needs of some districts. II. The system must permit revenues derived from local taxation to be used to supplement Type I revenue described above. III. The system as a whole must generate public school general fund revenues so as to result in Type 2 revenues constituting not more than a court determined percentage of the State total of all school district general fund revenues."

provisions of S.B. 90 and A.B. 1267, is in approximate compliance with the suggested standards.[31]

The fundamental defect in this argument is that it flies in the face of our holding in *Serrano I* and also of the findings of the trial court, which were carefully grounded on that holding. In *Serrano I* we held that if the allegations of the complaint were sustained—which allegations dealt not only with district disparities in revenue-producing capability but also with the effect of such disparities on the quality of education in the various districts (see *Serrano I, supra,* at p. 601, fn. 16)—then "the financial system must fall and the statutes comprising it must be found unconstitutional" as in violation of equal protection. (*Serrano I, supra,* at p. 615.) We described the system in question (i.e., the system alleged to exist in the complaint) as one which "conditions the full entitlement to [the interest in education] on wealth, classifies its recipients on the basis of their collective affluences[,] and makes the quality of a child's education depend upon the resources of his school district. . . ." (*Id.* at p. 614.) It follows, therefore, that any system in which the two basic elements of this description are present—i.e., (1) the conditioning of the availability of school revenues upon district wealth, with resultant

[31]Defendants concede that had this standard been applied to the financing system in 1971, at the time of *Serrano I,* it would necessarily have been concluded that the then system was not in compliance. At that time, it is asserted, "the relative values placed upon equal educational opportunities and local fiscal control [as reflected in the statewide ratio of 'equalized' revenues] were approximately 76.4% and 23.6%, respectively." On the other hand, it is urged, the application of the standard to the 1973-1974 system (i.e. the system as it stood following the enactment of S.B. 90 and A.B. 1267) would reveal a ratio of 89.6 percent "equalized" revenues to 10.4 percent "unequalized" revenues.

disparities in school revenue, and (2) the dependency of the quality of education upon the level of district expenditure—must be declared invalid unless it finds justification sufficient to satisfy the applicable equal protection test.[32]

The trial court, scrupulously adhering to the law as set forth in our previous opinion, concluded in essence that the new school financing system, although considerably improved over that which was before us in *Serrano I*, nevertheless retained the foregoing ingredients of the former system. This determination was recorded in no less than 299 findings of fact, none of which is challenged by defendants as lacking in substantial support. In these circumstances defendants cannot now be heard to maintain that different "criteria" should have been employed by the trial court. The "criteria" utilized by the trial court in assessing the discriminatory effect of the system before it were those enjoined upon the court by our opinion in *Serrano I*. Clearly there was no error in this respect.

Moreover, even if defendants' "optimum balance" argument were not foreclosed by our decision in *Serrano I*—and if it be further assumed that the recommended 90/10 ratio might be sufficient to satisfy constitutional demands[33]—it is apparent that the factual prem-

[32]It is contended in this case, of course, that the equal protection standard utilized by us in *Serrano I* is no longer—after the U.S. Supreme Court's *Rodriguez* decision—the appropriate test. We consider this matter in due course. For the present we assert only this limited proposition: *Whatever* the applicable equal protection test, the findings of the trial court establish that discrimination of the character condemned in *Serrano I* has been shown to exist in the school financing system presently before us.

[33]It was stated by defendants at oral argument that the current budget statewide is in the neighborhood of $5 billion. To allow 10 percent of this sum, or $500 million, to be

ises on which such argument is based are open to serious question.

In the first place, the figures upon which defendants base their assertion of present compliance with the suggested standard (see fn. 31, *ante*, and accompanying text) are drawn from 1973-1974 fiscal data, that is, data reflecting the immediate impact of the post-*Serrano I* enactments. It is clear, however, that in 1973-1974 the various pressures—notably increasing inflation and declining enrollment[34]—tending to augment the district ratio of local supplements to other revenues had not fully manifested themselves. Under the present system which, according to the trial court's findings, makes the ability of particular school districts to cope with such pressures vary according to the taxable wealth of the particular district, it can be expected that future years will see an increase statewide in the ratio of local supplements to other revenues. In such circumstances, the extent of an individual district's participation in the statewide increase will be geared to its taxable wealth. To ask, as defendants do, that we defer our notice of such probable future disparities to the time of their actual occurrence is to ask that

distributed pursuant to a system rendering access a function of taxable wealth would be far from an insignificant matter, especially when it is considered that it is those funds over and above the assertedly "equalized" level which are critical to a school district's ability to raise its program beyond a marginal level and respond with creativity and freedom of action to peculiar district needs and desires.

[34]The immediate effect of declining enrollments, of course, is a lowered ADA and a corresponding reduction in state-provided foundation program money to the affected district. The cost of education due to declining enrollment does not decline in the same proportion. Under the system here before us, the only remedy for this situation, barring dramatic increases in the amount of taxable wealth in a district, is an increased tax rate.

we ignore inherent defects in the system which we are called upon to examine.

More fundamentally, however, we point out that the basic factual premise upon which defendants posit the above argument—namely that under the subject system 90 percent of total statewide school expenditures are "equalized" or, in other words, are *not* "dependent upon the taxable wealth in a school district and the capacity and willingness of the voters to pay additional school taxes"—is flatly and fully contradicted by the factual determinations of the trial court. The lion's share of those revenues asserted to be in the "equalized" category is composed of revenue represented by the foundation program (approximately 74 percent of all revenue), yet the trial court explicitly found that the tax effort required of a school district to attain the foundation level[35] varied according to the taxable wealth of that district. Thus, these revenues can by no means be considered "equalized" under defendants' own definition of that term. If we include foundation program funds among those funds which are "unequalized," the ratio becomes not 10 percent to 90 percent in favor of "equalized" revenues but approximately 84 percent to 16 percent in favor of "unequalized" revenues.

Finally, we offer some comments upon the complex problems associated with "municipal overburden," which defendants and some of the amici curiae, notably the San Francisco Unified School District, see as a critical

[35]As we point out later in this opinion, the fact that disparities in district wealth result in disparities in tax effort required to reach foundation levels is not by itself determinative of the issue before us. It is only insofar as such disparities have the effect of producing disparities in *educational opportunity* that they here concern us.

problem under any system of school financing. It is important to recognize at the outset that "municipal overburden" is a banner under which many armies march. Strictly speaking, the term relates to the phenomenon, prevalent in concentrated urban areas, of high property tax rates for governmental services other than education. Such a phenomenon, it is suggested, must be taken into account when comparing school tax rates in various districts; a lower school tax rate in an urban area, it is urged, cannot be realistically compared with higher tax rates in suburban or rural areas in terms of "equal tax effort" because the taypayers residing in districts in the latters areas may bear a lighter overall tax burden in terms of a total rate.[36] As the trial court found, however, the phenomenon in question is not limited in it occurrence to districts such as San Francisco where a relatively high assessed valuation (due to a concentration of business and industry) combined with a comparatively small ADA permits a relatively lower school tax rate. On the contrary, the residents of districts in Los Angeles, San Diego, and San Jose, for example—with a much

[36]The following statistics comparing San Francisco with neighboring counties, derived from the 1974 California Statistical Abstract, are provided by defendants in illustration of this point:

	Average School Tax Rate	Average Other Purpose Rate	Rate Average Total
Contra Costa	$6.86	$5.85	$12.71
Marin	6.64	4.63	11.27
San Francisco	4.47	7.30	11.77
San Mateo	6.31	3.55	9.86
State Average	$5.91	$5.24	$11.15

lower assessed valuation per ADA[37]—suffer from the same typical urban problems and require similarly high nonschool tax rates to meet them. The system before us, by tying a district's ability to respond to its educational needs and desires to its taxable wealth per ADA, clearly discriminates among equally beleaguered urban districts from the point of view of their respective capacities to bring educational benefits to the students resident within their borders.[38]

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[37]Statistics published by the California State Department of Education contain the following figures relative to comparative assessed valuation per ADA (1973-1974) in the indicated areas.

"Modified Assessed Valuation Per Unit Of Second Period a.d.a., 1973-1974"

District	Elementary	High School
Los Angeles Unified	$22,857	$ 46,182
San Diego Unified	21,376	52,109
San Jose Unified	21,533	47,722
San Francisco Unified	57,658	116,328

(1973-74 California Public Schools, Selected Statistics, Table IV-II.)

[38]Defendants also advance several arguments relating to what they term in their brief "the search for tax equity." These arguments, generally speaking, relate to the fact that the level of assessed valuation per ADA in a particular school district tells us little about the income level of families residing within that district. Thus, in many cases a relatively high assessed valuation per ADA will accompany a relatively low median family income; this would normally occur as a result of the presence a district whose residents suffer from relative poverty within a district whose residents suffer from relative poverty from the point of view of average family income. At the other extreme are districts in which the assessed valuation per ADA is relatively low in spite of a relatively high median family income; this combination would typically be present in a community having no significant business or industry where the emphasis is on single-family dwellings—i.e., a relatively "affluent" (from the standpoint of the standard of living of inhabitants) suburb. A "fiscally neutral" system, defendants fear, might result in taking from the "poor" city (which in spite of a lower median income level has a higher assessed valuation per ADA) in order to give to the "rich" suburb (which in spite of a higher median income level has a lower assessed valuation per ADA). This, it is urged, would be an intolerable anomaly—especially in view of the fact, adverted to above (see fn. 36, *ante*, and accompanying text), that in many cases under the present system a property-rich city, in spite of its lower school tax rate, will impose a total tax rate comparable to or in excess of the total tax rate in an income-rich suburb.

The dispositive answer to the above arguments is simply that this court is not now engaged in—nor is it about to undertake—the "search for tax equity" which defendants prefigure. As defendants themselves recognize, it is the Legislature which, by virtue of institutional competency as well as constitutional function (see *Haman v. County of Humboldt* (1973) 8 Cal.3d 922, 925-926 [106 Cal.Rptr. 617, 506 P.2d 993], and cases there cited; cf. *Community Redevelopment Agency v. Abrams* (1975) 15 Cal.3d 813, 828-832 [126 Cal.Rptr. 473, 543 P.2d 905]), is assigned that difficult and perilous quest. Our task is much more narrowly defined: it is to determine whether the trial court committed prejudicial legal error in determining whether the state school financing system at issue before it was violative of our state constitutional provisions guaranteeing equal protection of the laws insofar as it denies equal educational opportunity to the public school students of this state. If we determine that no such error occurred, we must affirm the trial court's judgment, leaving the matter of achieving a constitutional system to the body equipped and designed to perform that function. Broad considerations of "tax equity," while they will certainly be a matter of immediate concern to the Legislature in carrying out such a task, are pertinent to our present determination only insofar as it is shown that the system before us, through its imposition of burdens and bestowal of benefits, results in impermissible disparity in the level of educational opportunity available to the students of the various school districts of this state.

The term "municipal overburden" is also sometimes used to designate certain problems related not to high nonschool tax rates but to additional burdens of school expenditure imposed upon urban districts by the facts of urban life. When there is widespread poverty, disadvantaged youth, and bilingualism in a district, it is argued, not only do purely educational costs rise due to the necessity for increased effort to overcome motivational and adaptive problems, but costs related to matters like vandalism rise as well. Again, however, the incidence of these problems is not limited to districts

of any particular level of wealth per ADA. From the point of view of providing education, those districts which are able to meet the above problems because of a relatively high assessed valuation per ADA are clearly favored over districts which lack that advantage.

The immediately foregoing discussion reveals but one aspect of a more fundamental and pervasive problem. As defendants state the matter in their reply brief: "The weak relationship between expenditures per pupil and taxable wealth per pupil . . . is explained in part by factors affecting the cost of offering substantially equivalent school programs in different school districts. For example, some school districts have old buildings which require expensive maintenance; some have a disproportionate number of older teachers entitled to higher salaries; some must spend excessive amounts for security, and for the repair of vandalized buildings. Some high schools in remote parts of the State have only a few students and must maintain costly classes for less than ten students. Some schools must insulate rooms to keep out distracting noise from airports or freeways. Some are located in parts of the State where climatic conditions require unusually high expenditures for heating or air conditioning." Under the system we here examine, however, the ability of a school district to meet those problems peculiar to it depends in large part upon the taxable wealth of that district per ADA. A fiscally neutral system, if tailored in a responsive and responsible way, would in no way resemble the specter which defendants raise. Rather, it would make the individual district's ability to meet its own particular problems connected with providing educational opportunity depend upon factors other than the wealth of the district, and thus dissipate

the discrimination which characterizes the system before us.

For all of the foregoing reasons we reject in its entirety defendants' constellation of contentions dealing with the criterion of "fiscal neutrality" adopted by the trial court. We have concluded, upon a complete review of the findings and the evidence, that the discrimination in public school financing of which plaintiffs complain has been shown to exist under the system here at issue, and that the trial court, in so finding, employed proper criteria. We now proceed to address the question whether the system as shown to exist is invalid as in violation of constitutional guarantees.

VI

In *Serrano I* this court, in its determination of whether or not the allegations of the complaint stated a cause of action, was faced at the outset with the task of choosing the proper equal protection standard to be applied. "[T]he United States Supreme Court," we pointed out, "has employed a two-level test for measuring legislative classifications against the equal protection clause. 'In the area of economic regulation, the high court has exercised restraint, investing legislation with a presumption of constitutionality and requiring merely that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose. . . . [¶] On the other hand, in cases involving "suspect classifications" or touching on "fundamental interests," . . . the court has adopted an attitude of active and critical analysis, subjecting the classification of strict scrutiny. . . . Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the

distinctions drawn by the law are *necessary* to further its purpose.' " (*Serrano I* at p. 597, quoting from *Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal.Rptr. 839, 471 P.2d 487], vacated on other grounds (1971) 403 U.S. 915 [29 L.Ed.2d 692, 91 S.Ct. 2224].)

Concluding on the basis of the complaint that the case before us involved both a "suspect classification" (because the discrimination in question was made on the basis of wealth) and affected a "fundamental interest" (education), we proceeded to apply the latter standard. Addressing ourselves to the state interest advanced by defendants—local decision-making power and fiscal control—we concluded that it was not incumbent upon us to decide whether that asserted interest was "compelling" or whether the existing financial system was "necessary" to its furtherance because under the facts as alleged the notion of local control was a "cruel illusion for the poor school districts" due to limitations placed upon them by the system itself. "In summary," we held, "so long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option." (*Serrano I* at p. 611.)

During the progress of trial proceedings below, the United States Supreme Court rendered its decision in *San Antonio School District v. Rodriguez, supra,* 411

U.S. 1. There, addressing itself to an equal protection attack on the Texas public school financing system—which like the system here in question is based on the "foundation approach"—the high court held that that system (1) did not result in a suspect classification based upon wealth, and (2) did not affect any fundamental interest, education being less than fundamental for these purposes because it was not explicitly or implicitly guaranteed or protected by the terms of the federal Constitution. (*Id.*, at pp. 33-34, 61-62 [63 L.Ed.2d at pp. 42-43, 59-60].) Accordingly, the court held the so-called "strict scrutiny test" for equal protection review of state laws under the Fourteenth Amendment to the United States Constitution was inappropriate. Reinforced in this conclusion by the fact that the case before it involved peculiarly local questions of taxation, fiscal planning, and educational policy—and thus raised serious considerations of federalism and deference to local decision (*id.*, at pp. 40-44 [36 L.Ed.2d at pp. 47-50])—the high court proceeded to examine the Texas system under the less stringent "rational relationship" test, concluding that such a relationship to the state purpose of local control was shown.[39] (*Id.*, at pp. 48-55 [36 L.Ed.2d at pp. 51-56].)

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[39]Among the four dissenters, Justice White specifically grounded his disagreement with respect to this latter point on the very basis upon which we had refused to consider "local control" as a "compelling state interest" in *Serrano I*—i.e., that the notion of local control for less wealthy districts was chimerical. (*Id.*, at pp. 63-70 [36 L.Ed.2d at pp. 60-65]; see also dis. opn. by Marshall, J., pp. 127-130 [36 L.Ed.2d at pp. 97-100].) The difference, of course, was that we had looked to this consideration in our application of the so-called "strict scrutiny test," whereas Justice White—apparently agreeing with the majority that that test was inappropriate for federal purposes in the circumstances there present—utilized it in order to conclude that the state had failed to demonstrate any rational relationship between its system and the asserted interest.

We—along with the trial court and the parties—think it is clear that *Rodriguez* undercuts our decision in *Serrano I* to the extent that we held the California public school financing system (if proved to be as alleged) to be invalid as in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. However, as we made clear in footnote 11, our decision in *Serrano I* was based not only on the provisions of the federal Constitution but on the provisions of our own state Constitution as well.

Our footnote 11 read as follows: "The complaint also alleges that the financing system violates article I, sections 11 and 21 [now in substance article IV, section 16 and article I, section 7(b)] of the California Constitution. Section 11 provides: 'All laws of a general nature shall have a uniform operation.' Section 21 states: 'No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.' We have construed these provisions[40] as 'substantially the equivalent' of the equal protection clause of the Fourteenth Amendment to the federal Constitution. (*Dept. of Mental Hygiene v. Kirchner* (1965) 62 Cal.2d 586, 588 [43 Cal.Rptr. 329, 400 P.2d 321].) Consequently, our analysis of plaintiffs' federal equal protection contention is also applicable to their claim under these state constitutional provi-

[40]The passage of Proposition at the 1974 General Election added the following provision to our Constitution as article I, section 7, subdivision (a): "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws."

sions." (*Serrano I* at p. 596.) The first question here facing us is that of the proper interpretation of the foregoing two sentences in light of *Rodriguez*.

Three possible interpretations of this language have been suggested to us. All proceed on the premise properly embraced by all parties hereto, that the footnote's citation of our second *Kirchner* opinion forecloses any argument that a classification which satisfies federal equal protection standards by the same token satisfies our own constitutional provisions.[41] Granting this, however, defendants argue that our reliance in *Serrano I* on United States Supreme Court cases dealing with the proper application of the strict scrutiny standard of review must be reexamined in light of *Rodriguez*, and that such reexamination must result in the conclusion that neither a "suspect classification" nor a "fundamental interest" is here involved, precluding use of a strict scrutiny standard for purposes of resolving the *state* constitutional question. Plaintiffs, on the other hand, urge that removal of the *federal* ground by *Rodriguez* leaves our *Serrano I* rationale wholly intact on *state* grounds. Alternatively they argue that if *Rodriguez* is to be utilized by analogy in applying our

[41]In the indicated *Kirchner* opinion this court, responding to a mandate of the United States Supreme Court essentially inquiring whether our decision in *Dept. of Mental Hygiene v. Kirchner* (1964) 60 Cal.2d 716 [36 Cal.Rptr. 488, 388 P.2d 720, 20 A.L.R.3d 353] had an independent state ground, held that the conclusion reached, although in our view required by the equal protection clause of the Fourteenth Amendment, was in any event independently required by our state equal protection provisions. "We so conclude by our construction and application of California law," this court said, "*regardless of whether there is or is not compulsion to the same end by the federal Constitution.*" (62 Cal.2d at p. 588; italics added. (See Karst, *Serrano v. Priest: A State Court's Responsibilities and Opportunities in The Development of Federal Constitutional Law* (1972) 60 Cal.L.Rev. 720, 743-748.)

state constitutional provisions — so that, for example, a "fundamental interest" for *state* purposes would be held to exist only if the right in question is explicitly or implicitly guaranteed by the *state* Constitution—the interest in education will be seen to meet this test.[42] This, it will be recalled, was the theory adopted by the trial court (see fn. 19, *ante,* and accompanying text).

The primary position adopted by plaintiffs on this point is the correct one. As *Serrano I* makes clear through its reference to our second *Kirchner* opinion (and as all parties hereto are agreed), our state equal protection provisions, while "substantially the equivalent of" the guarantees contained in the Fourteenth Amendment to the United States Constitution, are possessed of an independent vitality which, in a given case, may demand an analysis different from that which would obtain if only the federal standard were appli-

[42]Three sections of our state Constitution are explicitly cited in support of this proposition. They are:

(1) Article IX, section 1: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement."

(2) Article IX, section 5: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

(3) Article XVI, section 8 (formerly art. XIII, § 15): "From all state revenues there shall first be set apart the monies to be applied by the state for support of the public school system and public institutions of higher education."

Amicus curiae Childhood and Government Project, which joins in the instant contention, does not shrink from passionate imagery in describing its position. Whereas, we are told, "the federal claim of fundamentality had to be argued in *Rodriguez* as a remote inference from the general language of the Bill of Rights[,] [u]nder California law the conclusion *thunders from the words of the [C]onstitution itself.[!]*"

cable. We have recently stated in a related context: "[I]n the area of fundamental civil liberties—which includes . . . all protections of the California Declaration of Rights—we sit as a court of last resort, subject only to the qualification that our interpretations may not restrict the guarantees accorded the national citizenry under the federal charter. In such constitutional adjudication, our first referent is California law and the full panoply of rights Californians have come to expect as their due. Accordingly, decisions of the United States Surpeme Court defining fundamental rights are persuasive authority to be afforded respectful consideration, but are to be followed by California courts only when they provide no less individual protection than is guaranteed by California law." (*People v. Longwill* (1975) 14 Cal.3d 943, 951, fn. 4 [123 Cal.Rptr. 297, 538 P.2d 753]; see also *People v. Disbrow* (1976) 16 Cal.3d 101, 114-115 [127 Cal.Rptr. 360, 545 P.2d 272]; *People v. Norman* (1975) 14 Cal.3d 929, 939 [123 Cal.Rptr. 109, 538 P.2d 237]; *People v. Brisendine* (1975) 13 Cal.3d 528, 548-552 [119 Cal. Rptr. 315, 531 P.2d 1099]; *Burrows v. Superior Court* (1974) 13 Cal.3d 238, 245-246 [118 Cal.Rptr. 166, 529 P.2d 590]; *Mandel v. Hodges* (1976) 54 Cal.App. 3d 596, 615-617 [127 Cal.Rptr. 244]; *State v. Kaluna* (1974) 55 Hawaii 361 [520 P.2d 51, 58-59]; *Baker v. City of Fairbanks* (Alaska 1970) 471 P.2d 386, 401-402;[43] see generally Note, *Project Report: Toward*

[43]We find the language of the Alaska Supreme Court to be particularly apposite in this respect: "While we must enforce the minimum constitutional standards imposed upon us by the United States Supreme Court's interpretation of the Fourteenth Amendment, we are free, and we are under a duty, to develop additional constitutional rights and privileges under our . . . Constitution if we find such fundamental rights and privileges

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An Activist Role for State Bills of Rights (1973) 8 Harv. Civ. Rights—Civ. Lib.L.Rev. 271; Falk, *Foreword: The State Constitution: A More Than "Adequate" Nonfederal Ground* (1973) 61 Cal.L.Rev. 273; Note, *Rediscovering the California Declarations of Rights* (1974) 26 Hastings L.J. 481.)

Thus, the fact that a majority of the United States Supreme Court have now chosen to contract the area of active and critical analysis under the strict scrutiny test for federal constitutional purposes[44] can have no effect upon the existing construction and application afforded our own constitutional provisions. Nor can the additional fact—if it be a fact—that certain of the high court's former decisions (which may have been relied upon by us in *Serrano I*) may not be expected to thrive in the shadow of *Rodriguez* cause us to withdraw from the principles we there announced on state as well as federal grounds.

For these reasons then, we now adhere to our determinations, made in *Serrano I*, that for the reasons

to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage. We need not stand by idly and passively, waiting for constitutional direction from the highest court of the land. Instead we should be moving concurrently to develop and expound the principles embedded in our constitutional law." (471 P.2d at pp. 401-402, fns. omitted.)

[44]We do not think it open to doubt that the *Rodriguez* majority had considerable difficulty accommodating its new approach to certain of its prior decisions, especially in the area of fundamental rights. Indeed, we share the curiosity of Justice Marshall, who in his dissent states that he "would like to know where the Constitution guarantees the right to procreate, *Skinner v. Oklahoma* [ex rel. *Williamson*], 316 U.S. 535, 541 (1942), or the right to vote in state elections, *e.g., Reynolds v. Sims*, 377 U.S. 533 (1964), or the right to appeal from a criminal conviction, *e.g., Griffin v. Illinois*, 351 U.S. 12 (1956)." (*Rodriguez, supra*, at p. 100 [36 L.Ed.2d at p. 82].)

there stated and for purposes of assessing our state public school financing system in light of our state constitutional provisions guaranteeing equal protection of the laws (1) discrimination in educational opportunity on the basis of district wealth involves a suspect classification, and (2) education is a fundamental interest. Because the school financing system here in question has been shown by substantial and convincing evidence produced at trial to involve a suspect classification (insofar as this system, like the former one, draws distinctions on the basis of district wealth), and because that classification affects the fundamental interest of the students of this state in education, we have no difficulty in concluding today, as we concluded in *Serrano I*, that the school financing system before us must be examined under our state constitutional provisions with the strict and searching scrutiny appropriate to such a case.[45]

We are fortified in reaching this conclusion by language appearing in the *Rodriguez* decision itself. The high court, in passing upon the validity of the Texas system under the federal equal protection clause, repeatedly emphasized its lack of "expertise" and familiarity with local problems of school financing and educational policy, which lack "counsel[ed] against premature inter-

[45]In view of this conclusion we need not address the problem, raised in pointed and lucid fashion by one of the amici curiae, whether in applying our *state* equal-protection provisions we should insist upon strict scrutiny review of all governmental classifications based on wealth, thus elevating such classifications to a level of "suspectedness" equivalent to those based on race. The classification here in question, which is based on district wealth, clearly affects the fundamental interest of the children of the state in education, and we hold here, as we held in *Serrano I* (see especially pp. 614-615), that this combination of factors warrants strict judicial scrutiny under our state equal-protection provisions.

ference with informed judgments made at the state and local levels." (*Rodriguez, supra,* at p. 42 [36 L.Ed.2d at p. 48].) These considerations, in conjunction with abiding concerns from the standpoint of federalism,[46] in the high court's view "buttress[ed] [its] conclusion that Texas' system of public school finance is an inappropriate candidate for strict judicial scrutiny." (*Id.*, at p. 44 [36 L.Ed.2d at p. 49].) This court, on the other hand, in addressing the instant case occupies a position quite different from that of the high court in *Rodriguez*. The constraints of federalism, so necessary to the proper functioning of our unique system of national government, are not applicable to this court in its determination of whether our own state's public school financing system runs afoul of state constitutional provisions. Moreover, while we cannot claim that we have achieved the perspective of "expertise" on the subjects of school financing and educational policy, our deliberations in this matter have had the benefit of a thoughtfully developed trial record (comprising almost 4,000 pages of testimonial transcript, replete with the opinions of experts of various accomplishment and persuasions, and a clerk's tran-

[46]The high court explained its misgivings on the federalism question as follows: "It must be remembered, also, that every claim arising under the Equal Protection Clause has implications for the relationship between national and state power under our federal system. Questions of federalism are always inherent in the process of determining whether a State's laws are to be accorded the traditional presumption of constitutionality, or are to be subjected instead to rigorous judicial scrutiny. While '[t]he maintenance of the principles of federalism is a foremost consideration in interpreting any of the pertinent constitutional provisions under which this Court examines state action,' it would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every State." (*Id.*, at p. 44: fn. omitted [36 L.Ed.2d at p. 49].)

script of almost equal size), comprehensive if not exhaustive findings on the part of an able trial judge, and voluminous briefing by the parties and no less than nine amici curiae, among which are included the state Superintendent of Public Instruction. We believe that this background amply equips us to undertake the searching judicial scrutiny of our state's public school financing system which is required of us under our state constitutional provisions guaranteeing equal protection of the laws.

We point out in closing, however, that our application of the strict scrutiny test in this case should in no way be interpreted to imply an acceptance of the theory, adopted by the trial court and advanced as an alternative rationale by plaintiffs and some of their supporting amici, by which the *Rodriguez* approach to assessing "fundamentalness" in affected rights is applied by analogy in the state sphere. (See fn. 20, *ante,* and accompanying text.) Suffice it to say that we are constrained no more by inclination than by authority to gauge the importance of rights and interests affected by legislative classifications wholly through determining the extent to which they are "explicitly or implicitly guaranteed" (*Rodriguez, supra,* at p. 33 [36 L.Ed.2d at p. 43]) by the terms of our compendious, comprehensive, and distinctly mutable state Constitution.[47] In applying our state constitutional pro-

[47]In the 1970 report of the California Constitution Revision Commission (proposed revision 3, part 1 (introduction) p. 7) it is stated: "Between 1879 and 1964 our Constitution was amended over 300 times. Its length increased from 16,000 to more than 75,000 words, and it was 10 times longer than the United States Constitution." Largely as a result of the work of the commission, amendments made subsequent to 1964 have reduced the sheer size of the document somewhat, but it remains

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visions guaranteeing equal protection of the laws we shall continue to apply strict and searching judicial scrutiny to legislative classifications which, because of their impact on those individual rights and liberties which lie at the core of our free and representative form of government,[48] are properly considered "fundamental."

VII

For the reasons above stated, we have concluded that the state public school financing system here under review, because it establishes and perpetuates a classification based upon district wealth which affects the fundamental interest of education, must be subjected to strict judicial scrutiny in determining whether it complies with our state equal protection provisions. Under this standard the presumption of constitutionality normally attaching to state legislative classifications falls away, and the state must shoulder the burden of establishing that the classification in question is necessary to achieve a compelling state interest. (*Serrano I* at p. 597; see also *Weber v. City Council* (1973) 9 Cal.3d 950, 958-959 [109 Cal.Rptr. 553, 513 P.2d 601].) Basing our determination upon the amply supported factual findings of the trial court, which we have summarized in part II above, we con-

today, as it was aptly termed over two decades ago, "A Prolix And Formidable Charter . . . hardly adapted to be a convenient rallying code a symbol for the ideologies of democracy." (Palmer & Selvin, The Development of Law in Cal., spec. feature in 1 Ann. Const. West's Ann. Cal. Codes (1954 ed.) pt. IV, at pp. 26-27.)

[48]We do not suggest, of course, that the treatment afforded particular rights and interests by the provisions of our state Constitution is not to be accorded significant consideration in determinations of this kind. We do suggest that this factor is not to be given conclusive weight.

clude without hesitation that the trial court properly determined that the state failed to bear this burden.

Our reasons for this conclusion are essentially those stated by us on this point in *Serrano I*. The system in question has been found by the trial court, on the basis of substantial and convincing evidence, to suffer from the same basic shortcomings as that system which was alleged to exist in the original complaint—to wit, it allows the availability of educational opportunity to vary as a function of the assessed valuation per ADA of taxable property within a given district. The state interest advanced in justification of this discrimination continues to be that of local control of fiscal and educational matters. However, the trial court has found that asserted interest to be chimerical from the standpoint of those districts which are less favored in terms of taxable wealth per pupil, and we ourselves, after a thorough examination of the record, are in wholehearted agreement with this assessment.

The admitted improvements to the system which were wrought by the Legislature following *Serrano I* have not been and will not in the foreseeable future be sufficient to negate those features of the system which operate to perpetuate this inquity. Foremost among these—especially in a period of rising inflation and restrictive revenue limits—is the continued availability of voted tax overrides which, while providing more affluent districts with a ready means for meeting what they conceive as legitimate and proper educational objectives, will be recognized by the poorer districts, unable to support the passage of such overrides in order to meet equally desired objectives, as but a new and more invidious aspect of that "cruel illusion" which we found to be inherent in the former system.

(*Serrano I* at p. 611.) In short, what we said in our former opinion in this respect is equally true here. "[S]o long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base [per ADA] will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option." (*Id.*)

It is accordingly clear that the California public school financing system here under review, because it renders the educational opportunity available to the students of this state a function of the taxable wealth per ADA of the districts in which they live, has not been shown by the state to be necessary to achieve a compelling state interest.[49] Defendants, however, have one more string to their bow: they, joined by one of the amici curiae, contend that even in the event of such a holding by this court the financing system before us cannot be held to be in violation of state equal protection provisions, because other provisions of our state Constitution specifically authorize

[49]As has been indicated in footnote 19, *ante*, the trial court found that, in addition to being invalid under the strict scrutiny test, "[t]he school financing system for the State of California violates the equal-protection provisions of the California Constitution even under the lesser constitutional standard of rational relationship." While it is unnecessary for us to direct ourselves to this matter, we do observe that we perceive no *rational* relationship between the asserted governmental end of maximizing local initiative and a system which provides realistic options to exercise such initiative only in proportion to district wealth per ADA. (Cf. *San Antonio School District v. Rodriguez, supra*, 411 U.S. 1, 63-70 [36 L.Ed.2d 16, 60-65] (dis. opn. of White J.).)

just such a system. It is to this contention that we now turn.

III

Defendants' claim of specific state constitutional authorization for the public school financing system before us is primarily based upon the terms of article XIII, section 21, which provides: "Within such limits as may be provided under Section 20 of this Article [allowing the Legislature to provide maximum local property tax rates and bonding limits], the Legislature shall provide for an annual levy by county governing bodies of school district taxes sufficient to produce annual revenues for each district that the district's board determines are required for its schools and district functions." The argument, generally stated, is that a harmonious interpretation of this section along with other provisions requiring equal protection of the laws must operate to insulate distinctions based on district wealth disparities from state equal protection requirements. The argument proceeds on two distinct levels. First, it is urged, we held in *Serrano I* that the system there before us was "authorized" and "mandated" by the predecessor to article XIII, section 21 (former art. IX, § 6, par. 6); that holding, defendants and their supporting amicus assert, is now the law of the case, and to the extent that the system here in question shares in the shortcomings of the former system related to district wealth disparities, it too is so "authorized" and "mandated." Second, it is pointed out, even if we are not compelled to this conclusion by the doctrine of the law of the case, the terms of the section compel the indicated result. We take up these contentions in order.

At pages 595 and 596 of our opinion in *Serrano I*, in rejecting plaintiffs' contention that the system there alleged to exist was violative of the provisions of article IX, section 5 (requiring "a system of common schools"), we observed that former article IX, section 6, paragraph 6 (now art. XIII, § 21), the provision here at issue, "specifically authorizes the very element of the fiscal system of which plaintiffs complain." (*Id.*, at p. 596.) At a later point in the opinion, rejecting a contention of defendants that only de facto discrimination was here involved, we had occasion to observe that "[t]he school funding scheme is mandated in every detail by the California Constitution and statutes." (*Id.*, at p. 603.) It is urged that these two references, taken together, represent a holding that the system there before us was *required* by the terms of present article XIII, section 21. Insofar as the system now under examination shares in the features of the former system which we found objectionable in *Serrano I*, defendants argue, it is equally *required* by that section under the doctrine of the law of the case.

We reject such contentions as being utterly devoid of merit. Indeed, as we shall make clear, defendants' seizure upon such fragments of our opinion in *Serrano I* as a basis of argument not only results in an unreasoned distortion of such language but more unfortunately displays an attempt to circumvent the rationale of *Serrano I* (now the law of the case) by emphasizing isolated words out of context. It is beyond question—and beyond cavil—that in stating that former article IX, section 6 "specifically authorizes the very element of the fiscal system of which plaintiffs complain," we had reference to that "element" of the

system permitting variations in expenditures per ADA among the several districts. This is made clear by the context of the statement and the language following it. Former section 5 of article IX (the "common schools" provision) should not, we held, be interpreted to apply to school financing and require "uniform educational expenditures" because such an interpretation would render it inconsistent with former section 6 (the provision here at issue) which allows variation in school district expenditures. This was not to say, however, that former section 6 "authorized" or "approved" a system *in which such variation was the product of disparities in district wealth.* Any such conclusion would clearly have been at odds with our ultimate conclusion in *Serrano I* that the system there alleged to exist was violative of *state as well as federal* equal protection provisions. 5 Cal.3d at 596, fn. 11.) (See generally Part VI, *ante.*)

Similarly, by saying later on in our opinion, in disposing of an entirely different contention, that the school funding scheme was "mandated in every detail by the California Constitution *and statutes*" (*id.*, at p. 603; italics added), we in no way implied that the constitutional provision in question "mandated" the system there alleged to exist. The constitutional provision, as we shall point out more fully below, "mandated" only that there be a system allowing for local decision as to the level of school expenditures and that the mechanism to be utilized in providing revenues to permit such expenditures be a county levy of school district taxes. It was the *statutes* enacted under the aegis of that provision which tied the efficacy of local decision to district wealth.

We conclude for the foregoing reasons[50] that the doctrine of the law of the case is not helpful to defendants on this point. It remains for us to undertake an interpretation of article XIII, section 21 (former art. IX, § 6, par. 6) in order to determine whether that provision *requires* a public school financing system which, like that before us, makes local decisions affecting educational opportunity depend for their effectiveness upon the taxable wealth per ADA in the district. We conclude without hesitation that it does not.

As we have noted above, article XIII, section 21 of the state Constitution provides that the Legislature, within certain limits set by established maximum tax rates and bonding limits, "shall provide for an annual levy by county governing bodies of school district taxes sufficient to produce annual revenues for each district that the district's board determines are required for its schools and district functions." In so doing the provision both authorizes the Legislature to establish a mechanism by which the revenues "required" for each district are to be produced, and describes the character of that mechanism—i.e., "an annual levy by county

[50]Two additional points in this respect raised by our esteemed colleague in dissent are equally devoid of merit. The requirements of section 20701 et seq. of the Education Code, which in the words of *Serrano I* "authorized the governing body . . . to levy taxes on the real property within a school district at a rate necessary to meet the district's annual education budget" (5 Cal.3d at p. 592) are of course statutory rather than constitutional in stature. Moreover, as we point out below, such a requirement would in no way mandate a system, such as that before us, in which through the creation of districts of varying degrees of wealth per ADA the Legislature would foster disparities in educational opportunity. Similarly our statement in *Serrano I* that former article IX, section 6 (now art. XIII, § 21), "specifically authorizes local districts to levy school taxes" (5 Cal.3d at p. 598, fn. 12) in no way implies that that section authorizes a system in violation of the requirements of equal protection.

governing bodies of school district taxes." The provision does not, however, address itself to the question of the tax base to which the levy is to be applied, nor does it speak in terms of assessed valuation in any respect. Manifestly it does not authorize disparities in school district expenditures based upon the relative wealth per ADA of a particular school district. Such disparities, insofar as they have been here shown to exist, are the result of *legislative action, not constitutional mandate*.

Article IX, section 14 of the state Constitution clearly establishes that it is the Legislature which bears the ultimate responsibility for establishing school districts and their boundaries.[51] By its exercise of this power, and by the concurrent exercise of its powers under article XIII, section 21 to provide for a school financing mechanism based upon county levies of school district taxes, it has created a system whereby disparities in assessed valuation per ADA among the various school districts result in disparities in the educational opportunity available to the students within such districts. Thus, as we said in *Serrano I*, "[g]overnmental action drew the school district boundary lines, thus determining how much local wealth each district would contain [citations]." (5 Cal.3d at p. 603.) It is that action, which we reiterate is the product of *legislative* determinations,[52] that we today hold to be in viola-

[51]The section in question provides as here relevant: "The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and community college districts, of every kind and class, and may classify such districts."

[52]The dissenting opinion, in reaching the opposite conclusion, is guilty of a clear non sequitur. Starting from the proposition that section 21 "requires . . . a . . . system in which each

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tion of our state provisions guaranteeing equal protection of the laws.[53]

It seems to be argued, however, that because article XIII, section 21 authorizes the financing of schools by a county levy of school district taxes, the Legislature is free to structure a system based upon this mechanism in any way that it chooses. Such a notion, we hasten to point out, is manifestly absurd. A constitutional provision creating the duty and power to legislate in a particular area always remains subject to general constitutional requirements governing all legislation unless the intent of the Constitution to exempt it from such requirements plainly appears.

In *In re Jacobson* (1936) 16 Cal.App.2d 497 [60 P.2d 1001], for example, the Legislature, acting pursuant to its power to create a system of inferior courts (former art. VI, § 11a), did so in a manner which granted greater jurisdiction to city courts in populous

county may levy annually a school district tax in an amount sufficient (when supplemented by state aid) to provide the revenues deemed necessary by each district in that county," it then proceeds to make reference to article XIII, section 14, of the Constitution which requires that all property taxed by local government be assessed in the county, city and district in which it is situated. From these premises it goes on to conclude that section 21 "necessarily . . . contemplates a school financing system in which each individual district's needs are satisfied from the taxable wealth of that district. . . ." Assuming without conceding this to be so, however, it by no means follows that the system so contemplated is, as the dissent puts it, "the present system which the majority find unconstitutional." The present system, as we have shown, is the product of legislative judgment, not constitutional command.

[53]The learned trial judge disposed of the present contention pointedly and irrefutably: "The rationale which impresses this court is that section 6 of Article IX [now § 21 of Article XIII] of the California Constitution did not create the various school districts with their geographical boundaries and with their differences in property wealth. Section 6, Article IX [i.e. § 21 of Article XIII] is written to apply to whatever school districts have been created by the California Legislature."

townships than to the same class of courts of less populous townships—regardless of the population of the particular city. This, it was held, was in violation of the fundamental constitutional requirement that laws of a general nature have a uniform application. *"The legislature derives its power to create courts from the Constitution,"* the court stated, *"but it may do so only in conformity with the provisions of the Constitution.* It doubtless has the right to classify cities according to population, and have made such classification to prescribe different powers and regulations for each of the classes. The powers and regulations must, however, be uniform for each of the classes." (16 Cal. App.2d at p. 500; italics added.)

Similarly, in *Mordecai v. Board of Supervisors* (1920) 183 Cal. 434 [192 P. 40] the Legislature, acting pursuant to its constitutional power to create and regulate the affairs of irrigation districts (former art. XI, § 13), enacted a comprehensive irrigation plan which exempted from its provisions those districts located in counties which had adopted a charter prior to a specific date. This, we concluded, it could not do. "It is argued, in effect, that this provision [former art. XI, § 13] empowers the legislature to pass what laws it sees fit in regard to irrigation districts untrammeled by the general requirement that laws of a general nature shall have a uniform operation. We cannot agree with this. There is nothing to indicate that the power granted the legislature by this provision was not to be exercised by it subject to the general requirements of the constitution governing the manner in which the power of legislation when conferred or possessed shall be exercised. *The legislature has the power*

as conferred by the provision of the constitution just quoted to legislate concerning the affairs of irrigation districts, but that power, like the power of the legislature to legislate on other subjects, must be exercised in the manner in which the constitution provides that the power of legislation when it exists must be exercised. Before any grant of power to legislate on a particular subject can be held to be free of a general requirement governing all legislation, the intent of the constitution to that effect must be plain. No such intent appears in the present instance." (183 Cal. at pp. 441-442; italics added.)

By the same token, we are here confronted with a situation in which the Legislature has been granted the power to provide for the financing of schools through the mechanism of county levies of school district taxes. Nothing in the constitutional provision establishing that power, however, indicates that its exercise is to be freed from general constitutional limitations applicable to all legislation. Accordingly the Legislature, in its exercise of the subject power in conjunction with other powers possessed by it, was obliged to act in a manner consistent with such limitations. This it has not done. Instead it has undertaken to create a school financing system which, by making the quality of educational opportunity available to a student dependent upon the wealth of the district in which he lives, is manifestly inconsistent with fundamental constitutional provisions guaranteeing the equal protection of the laws to all citizens of this state. That system, we hold today, can no longer endure.

We also reject as wholly without merit the contention that the school financing system before us is somehow made necessary or permitted by the provisions of article

IX, section 1, of the state Constitution. That section provides: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." We declare ourselves at a loss to understand how this provision can be said to mandate or authorize the creation of a system which conditions educational opportunity on the taxable wealth of the district in which the student attends school.

(3c) For the foregoing reasons we cannot accept defendants' argument that there exists some irreconcilable conflict between the requirements of our state equal protection provisions and other state constitutional provisions of equal stature—namely article XIII, section 21, and article IX, section 1. The latter provisions, as we interpret them, neither mandate nor approve a system such as that before us, and therefore the only conflict which here appears is that between the requirements of our state equal protection provisions and the proven realities of the present, legislatively created California public school financing system—a conflict which the trial court, by holding that system to be invalid, properly resolved.[54]

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[54]We decline defendants' invitation to address ourselves to the constitutional merits of the various financing alternatives and combinations thereof which have been developed in the scholarly literature on this subject. Our concern today is with the system presently before us. We are confident that the Legislature, aided by what we have said today and the body of scholarship which has grown up about this subject, will be able to devise a public school financing system which achieves constitutional conformity from the standpoint of educational opportunity through an equitable structure of taxation.

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IX

To recapitulate, we conclude that the trial court properly ordered and decreed that the California public school financing system for public elementary and secondary schools, including those provisions of the S.B. 90 and A.B. 1267 legislation pertaining to this system, while not in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution, is invalid as being in violation of former article I, sections 11 and 21 (now art. IV, § 16 and art. I, § 7, respectively) of the California Constitution, commonly known as the equal protection of the laws provisions of our state Constitution. This determination and other related provisions of the judgment we find to be fully supported by the findings and the evidence; indeed, no attack has been made on the findings as lacking evidentiary support. For the reasons we have detailed, we discern no jurisdictional defect in the proceedings below based on the claim—rejected by us as devoid of merit—that the Governor and the Legislature should have been joined as indispensable parties. We conclude that the holding of the trial court is grounded solidly and soundly on our earlier decision in *Serrano I* wherein we determined among other things that the California public school financing system, failing to withstand "strict scrutiny," denied plaintiffs the equal protection of the laws under the relevant provisions of our state Constitution. We therefore confirm that our decision in *Serrano I* was based not only on the equal protection provisions of

As the dissenting opinion observes, quoting from the *Rodriguez* decision, "the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them." In this we most heartily agree; we differ with our brethren only as to the constitutional framework in which that task must be undertaken.

the federal Constitution but also on such provisions of our state Constitution, and we emphasize that insofar as the latter provisions are applicable here, *Serrano I* constitutes the law of the case.

We observe that the trial court so deemed it and properly adhered to the law set forth in our earlier opinion in assessing for state constitutional purposes the same financing system as revised by S.B. 90 and A.B. 1267. Since such system before the court was shown on substantial evidence to involve a suspect classification (based on district wealth) and to touch upon the fundamental interest of education, the trial court properly followed *Serrano I* in subjecting it to the "strict scrutiny" test under which the state has the burden of establishing that the classification in question is necessary to achieve a compelling state interest. Applying this test, the court properly determined on findings supported by substantial evidence that the state had failed to bear its burden and that the financing system before it was invalid as denying equal protection of the laws as guaranteed by the California Constitution. Finally we hold that, contrary to defendants' claim, there is no conflict between the requirements of our state equal protection provisions and other provisions of the California Constitution so as to compel the former to yield as the determinative law of this case.

The judgment is affirmed.

Wright, C. J., Tobriner, J., and Mosk, J., concurred.

RICHARDSON, J.—I respectfully dissent. My disagreement with the majority focuses principally on part VIII of their opinion wherein they consider the application of article XIII of the California Constitution to the present school financing program, concluding that the system is invalid as violative of the equal protection provisions of that Constitution. As I develop more fully below, I have serious reservations about the constitutional analysis indulged by the majority as it affects article XIII. My principal problem with the majority's thesis is *that the same Constitution expressly authorizes the essential elements of the challenged system.*

The majority's learned and comprehensive review of the asserted faults and failings of the present scheme and their holding that another, more equitable, one must be devised to replace it, may well be consistent with sound public policy. Doubtless, it represents a well-intended effort to assure equal educational opportunity for California's school children. Nonetheless, it is not our function to formulate public policy. Under our time-honored, constitutionally founded system of separation of governmental powers, we are not entrusted with such difficult tasks as devising or choosing between alternative educational financing policies. That responsibility is vested in the Legislature, alone, acting within the confines expressed in our state Constitution. So long as the Legislature has performed its work in a manner consistent with overriding constitutional principles, we must uphold its efforts regardless of our personal views as to the fairness or wisdom of those legislative results. Accordingly, it becomes vital to analyze with great precision those constitutional limits on legislative action before we invalidate a system

as important and accepted as the existing California school financing plan.

The majority do not now rely upon the equal protection clause of the *federal* Constitution. Contrary to our holding in *Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241] (*Serrano I*), it is now established by the highest authority that school district financing systems such as ours do *not* offend federal equal protection principles. (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1 [36 L.Ed.2d 16, 93 S.Ct. 1278].) Indeed, the majority herein candidly admit that the *Rodriguez* decision clearly "undercuts" *Serrano I's* reliance upon the national charter. (*Ante*, p. 762.) Among other things, the high court in *Rodriguez* held that the "strict scrutiny" standard of review was inapplicable, since no "fundamental interest" or "suspect classification" was involved; that the present traditional method of local district financing, though perhaps unfair in some respects, nevertheless operates in a rational fashion, without invidious discrimination; and that the courts should defer to the state *legislatures* in these matters of policy, since these bodies alone have the necessary expertise and familiarity with local problems. One may differ, as I do, with the high court's conclusion that education is not a fundamental interest. Yet, the question of whether the school financing plan here at issue violates *federal* equal protection has been laid to rest in *Rodriguez*.

The majority herein, disagreeing with *Rodriguez'* analysis of the equal protection issue, point to the fact that *Serrano I*, in a footnote, stated that its analysis of plaintiffs' federal equal protection contention "is also applicable to their claim under . . . state constitutional provisions." (5 Cal.3d at p. 596, fn. 11.) The

majority then hold, as we have noted, that California's school financing system is invalid under the only remaining constitutional refuge—the *state* equal protection provisions. (Cal. Const., art. I, § 7, art. IV, § 16.)

In broad, general language the Constitution guarantees both equal protection of the laws and uniform operation of the laws, and forbids irrevocable special privileges or immunities. Since, as we have previously observed, these provisions are "substantially the equivalent" of the federal equal protection clause (*Serrano I*, 5 Cal.3d at p. 596, fn. 11), although not required to do so, we might defer to the *Rodriguez* equal protection analysis rather than create our own different interpretation of substantially identical constitutional language. (See *People v. Disbrow* (1976) 16 Cal.3d 101, 119, dis. opn. [127 Cal.Rptr. 360, 545 P.2d 272].) Indeed, a number of state courts in post-*Rodriguez* cases have done just that—namely, declined to invalidate comparable school financing systems in reliance upon state constitutional provisions. (See *Northshore School District No. 417 v. Kinnear* (1974) 84 Wn.2d 685 [530 P.2d 178, 200-202]; *Shofstall v. Hollins* (1973) 110 Ariz. 88 [515 P.2d 590]; *Thompson v. Engelking* (1975) 96 Idaho 793 [537 P.2d 635]; cf. *Hootch v. Alaska State-Operated School System* (Alaska 1975) 536 P.2d 793, 804; but see *Robinson v. Cahill* (1973) 62 N.J. 473 [303 A.2d 273].) The present majority are, for reasons which I fully respect but do not accept, unwilling to follow the lead of *Rodriguez* and the foregoing cited cases.

My dissent, however, does not rely upon the foregoing principle of deference, for in my view the majority's analysis contains a serious, indeed fatal, flaw: the same

California Constitution which *generally* extends equal protection also *specifically* authorizes the essential elements of California's present system of school financing. As a matter of interpretive principle, the authority which the Constitution specifically extends with one hand cannot be generally withdrawn with the other.

The majority thoroughly explain that our public schools are financed from two major sources, the state school fund and local district taxes. As to the *former, state* aid to education is authorized by article IX, section 6, of the state Constitution, which directs the Legislature to provide a state school fund for apportionment each year in an amount not less than $180 per pupil in average daily attendance; that the fund shall be apportioned annually as the Legislature may provide, through the school districts; and that the Legislature must apportion at least $120 per pupil in the district during the next preceding fiscal year, and at least $2,400 to each school district in each fiscal year.

As to the *latter,* assistance to schools from *local* district taxation, the subject of plaintiffs' challenge herein, is authorized by article XIII, section 21, of the Constitution which provides: "Within such limits as may be provided under Section 20 of this Article [allowing the Legislature to provide maximum local property tax rates and bonding limits], the Legislature shall provide for an annual levy by county governing bodies of school district taxes sufficient to provide annual revenues for each district that the district's board determines are required for its schools and district functions."

Paraphrased, section 21 requires the Legislature to adopt a school financing system in which each county

may levy annually a school district tax in an amount sufficient to provide the revenues deemed necessary by each district board. Since under our Constitution property must be assessed in, and taxed only by, the county, city and district in which it is situated (art. XIII, § 14; see *San Francisco etc. Ry. Co. v. Scott* (1904) 142 Cal. 222, 229 [75 P. 575]; *Smith-Rice Heavy Lifts, Inc. v. County of Los Angeles* (1967) 256 Cal.App.2d 190, 200 [63 Cal.Rptr. 841]; Ehrman & Flavin, Taxing Cal. Property (1967) § 162, at pp. 145-146), it necessarily follows that article XIII of the Constitution, section 21 in conjunction with section 14, contemplates a school financing system in which each individual district's needs are satisfied from the taxable wealth of that district, namely, the present system which the majority find unconstituitonal. The majority describe the foregoing reasoning as a "non sequitur." If, however, section 21 empowers the Legislature to provide for district tax levies to assure adequate school revenues, and if under section 14 the property subject to tax by the district to generate those revenues must repose within the district, wherein lies the "non sequitur"? Do not sections 14 and 21, in combination, authorize, *constitutionally*, a system whereby levy of taxes on local property within the district, supplemented by state aid, shall constitute the source of school financing?

The majority assert that the constitutional provision at issue was intended to authorize a different, more equitable, system not based upon disparities in district wealth. The concede that the state Constitution "allows variation in school district *expenditures*" (*ante*, p. 770, italics added). One would presume that *expenditures* are more closely related to the quality of education

than generalized equality in the value of properties subject to district school taxes. However, we emphasized in *Serrano I* that the state Constitution did *not* require an equality of spending between various school districts. Our words were ". . . we have never interpreted the constitutional provision to require equal school spending; . . ." (5 Cal.3d at p. 596.) Nonetheless, the majority insist that since the Constitution does not expressly authorize district wealth disparities as to the source of district revenues, the present system cannot be deemed protected by its shield. In the majority's view, "Such disparities . . . are the result of *legislative atcion, not constitutional mandate.*" (*Ante*, p. 772, italics in original.) (In this connection, I do not contend, of course, that the California Constitution *mandates* the present system of school financing, but only that it *permits* or *authorizes* that system.)

The central theme of the majority is that the Legislature has somehow abused its constitutional authority by drawing school district boundary lines in a manner permitting variations in district wealth. As the majority put it, "It is that action [drawing district boundary lines], which we reiterate is the product of *legislative* determinations, that we today hold to be in violation of our state provisions guaranteeing equal protection of the laws." (*Ante*, p. 772, italics in original.) Yet, again it is manifest that the Legislature derives its power to create and classify school districts *from the same Constitution* (art. IX, § 14). Furthermore, we ourselves have long held that "The power of the legislature over school districts is *plenary*. [Citations.] It may divide, change, or abolish such districts at pleasure . . . . [Citation.]" (*Worthington S. Dist. v. Eureka S. Dist.* (1916) 173 Cal. 154, 156 [159 P. 437],

italics added; see *Hughes v. Ewing* (1892) 93 Cal. 414, 417 [28 P. 1067].) It seems to me self-evident that if the framers of our Constitution had intended to impose substantial restrictions upon the *plenary* power of the Legislature over school district boundaries, they would have *expressly* so provided. They did not do so. I suggest that it is highly unlikely that such a drastic and dramatic restriction on plenary power as the majority now impose would have been intended to occur *wholly by implication*. With due deference, I suggest that, to the contrary, we must presume that those who adopted section 21 (and its predecessor sections) were fully aware of the fact that there existed for years disparities in district wealth and that the effect of the continued exercise of such penary legislative power would result in continued disparities, which permitted wealthier districts to allocate more funds for educational purposes. (Undoubtedly, the existence of such disparities was a motivating factor in creating the state school fund to supplement local revenues. (Art. IX, § 6.)) The inequitable result of district wealth disparities is forcefully and eloquently demonstrated by the majority. Nevertheless, once we determine that the action in question is constitutionally authorized the sociologically unsatisfactory or, indeed unacceptable, consequences are matters for legislative correction.

We have often insisted that a constitutional enactment be viewed in the "light of its historical context and the conditions existing prior to its enactment." (*Mulkey v. Reitman* (1966) 64 Cal.2d 529, 534 [50 Cal.Rptr. 881, 413 P.2d 825], and cases cited.) Section 21 of article XIII, was adopted as recently as 1974. We have been told that its purpose was to restate "without change in meaning" the provisions of former article

IX, section 6, adopted in 1946. (See Cal. Const. Revision Com., Proposed Revision of the Cal. Constitution (1971) pt. 6, p. 36.) Section 6 provided: "The Legislature shall provide for the levying annually by the governing body of each county, and city and county, of such school district taxes, . . . as will produce in each fiscal year such revenue for each school district as the governing board thereof shall determine is required in such fiscal year for the support of all schools and functions of said district authorized or required by law."

Thus, as early as 1946, the California Constitution expressly authorized a system of local school district financing. Indeed, the original 1849 Constitution provided that any local school district which neglected to "keep and support" its school might lose its proportion of the interest from the public school fund. (Art. IX, § 3.) Local school district financing systems in various forms, but all of them based upon individual district wealth, have been in operation from this state's inception surviving numerous amendments to the constitutional provisions authorizing local support of public schools. (See Sweet, History of the Public School System in Cal. (1876) at pp. 60-62, 66.)

The foregoing review of constitutional history is not new. A close examination of our own previous analysis of the problem demonstrates that the same conclusions I have reached were also necessarily implicit in our opinion in *Serrano I*. Respectfully, I find unconvincing the majority's attempt to explain away our definitive disposition in *Serrano I* of the state constitutional issue whether district wealth disparities can survive equal protection analysis.

First, in describing the present school financing system, *Serrano I* acknowledged that wealth-produced variations in district spending are a necessary by-product of the system authorized by the state Constitution. We said: "Pursuant to *article IX, section 6* (the predecessor to art. XIII, § 21] of the California Constitution, the Legislature has authorized the governing body of each county, and city and county, to levy taxes on the real property within a school district at a rate necessary to meet the district's annual education budget. (Ed. Code, § 20701 et seq.) The amount of revenue which a district can raise in this manner *thus depends largely on its tax base—i.e., the assessed valuation of real property within its borders.*" (5 Cal.3d at p. 592, italics added.) The foregoing, contrary to the majority view (*ante*, p. 771, fn. 50), is founded upon *constitutional* (art. IX, § 6 (the predecessor to art. XIII, § 21)), *not legislative*, authority.

Second, in *Serrano I*, plaintiffs had argued that the present system was invalid under article IX, section 5, of the state Constitution, which section requires the Legislature to provide for a system of common schools. In rejecting the argument we said that, "While article IX, section 5 makes no reference to school financing, *section 6 of that same article* [the predecessor to art. XIII, § 21] *specifically authorizes the very element of the fiscal system of which plaintiffs complain.*" (5 Cal.3d at p. 596, italics added.) What was the "element of the fiscal system of which plaintiffs complain"? The majority insist that this phrase related to "variations in expenditures per ADA." I think it arguable, however, that this "element" in question had broader implications and included not only expenditure inequalities but district wealth disparities as well. For,

on the page previous to the above quotation, we had described plaintiffs' preliminary contention as follows: "Plaintiffs' argument is that the present financing method produces separate and distinct systems, *each offering an educational program which varies with the relative wealth of the district's residents.*" (*Id.*, at p. 595, italics added.) I think that it is this element which section 6 of article IX authorizes, and not merely the existence of "variations in expenditures per ADA" (as suggested by the majority herein).

Third, in *Serrano I*, we stated that "it is clear that such [locally raised] revenue is a part of the overall educational financing system. As we pointed out, *supra*, article IX, section 6, of the state Constitution specifically authorizes local districts to levy school taxes." (*Id.*, at p. 598, fn. 12.) Once again the question must be put: If under article IX local district taxes are specifically authorized for school support, and if, under article XIII, of that same Constitution, such taxes necessarily must be assessed upon local wealth, then how is the system rendered unconstitutional under article I?

Finally, in *Serrano I* defendants had argued that any discriminatory effects arising from the present system were "de facto" in origin and accordingly not invidious in nature. We flatly, and in my opinion wisely, rejected the argument, noting that "Indeed, we find the case unusual in the extent to which governmental action *is* [italics in orig.] the cause of the wealth classifications. *The school funding scheme is mandated in every detail by the California Constitution and statutes.*" (*Id.*, at p. 603, italics added.) The majority insist that the constitutional provision mandates "only that there be a system allowing for local decision as to the level

of school expenditures," (*ante,* pp. 771-772). I fail, however, to see how much local decision making, necessarily based upon available local wealth as supplemented by state aid, differs in any material respect from the financing system under scrutiny herein.

In summary, we must reconcile two separate provisions of the state Constitution, first, a general expression guaranteeing our citizens "equal protection of the laws," and second, a specific constitutional provision authorizing the Legislature to adopt a school financing system whereby each district finances its own educational needs. The majority, purporting to follow the well established rule that conflicts between constitutional or statutory provisions should be avoided, construe article XIII, section 21, I respectfully suggest, in a manner which contradicts its plain meaning, ignores the "historical context" of the section, and conflicts with our own recent construction of that section in *Serrano I.* The irreconcilable conflict arising from the majority's rejection of the *Rodriguez* analysis necessarily leads to a result which is not palatable to them—namely, in accordance with *Serrano I,* the conflict can be resolved in only one manner: *the more specific provision of the Constitution must prevail.* (5 Cal.3d at p. 596.) I am unable to accept the majority's conclusion that the present system of school financing in this state, whose essential elements are expressly authorized by specific provisions of the state Constitution, is at the same time in violation of the general equal protection clause of the same Constitution.

Few constitutional principles are more firmly established and accepted than the rule that all presumptions and intendments favor the validity of legislation. The case for invalidity of statutes must reach beyond

mere doubt to the level at which we fairly can say that "'". . . their unconstitutionality clearly, positively, and unmistakeably [*sic*] appears."'" (*In re Ricky H.* (1970) 2 Cal.3d 513, 519 [86 Cal.Rptr. 76, 468 P.2d 204].) Similarly, it is equally well settled that there exists a strong presumption in favor of the Legislature's interpretation of a provision of the Constitution. (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 692 [97 Cal.Rptr. 1, 488 P.2d 161].) Thus, we must presume that the Legislature properly construed the scope of its authority under article XIII, section 21, of the Constitution, and we must further presume that the resulting school financing legislation is constitutional. The foregoing principles must be accorded great weight in determining the constitutional validity of the present school financing scheme.

I am wholly sympathetic toward the majority's efforts to achieve a more fair and equitable result in this case. I also fully acknowledge the vital role which education must play in our modern society, and the absolute necessity of assuring an adequate education for all of our citizens. There could be no more worthy goal. Yet, and I say this with the utmost deference, as I conceive our role we are not free to roam in search of administratively acceptable answers, but must work within the confines of constitutional limitations, leaving to the Legislature the selection of those particular responses which are most appropriate to a developing need. (Cal. Const., art. III, § 3.) So long as the Legislature has operated under its constitutional authority we should withhold intervention. It is this principle, I believe, which prompted the wise and pertinent admonition of the United States Supreme Court in the closing sentences of its *Rodriguez* decision: "These

matters merit the continued attention of the scholars who already have contributed much by their challenges. *But the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.*" (*San Antonio School District v. Rodriguez, supra,* 411 U.S. at pp. 58-59 [36 L.Ed.2d at p. 58], italics added.)

I would reverse the judgment.

CLARK, J.—I dissent.

Our schools serve nearly 5 million students, spending over $5 billion. (1973-1974, Cal. Public Schs. Selected Stats., pp. 84-85, tables IV-1 B, IV-2 B.)[1] The educational system works amazingly well, considering its huge size, the complexity of its support, and the great diversity of geography, population and commerce within our state. The system provides a high and relatively uniform level of educational opportunity.

Approximately half our schools' budget of $5 billion comes from local real property tax. Eliminating this resource would be unfair to our youth, jeopardizing the quality of their education. It is questionable whether raising an additional $2½ billion through other taxes is politically feasible. The answer lies with the legislative and executive branches of state government. While neither urging abolition of local property tax nor invalidating article XIII, section 21, of our Constitution providing for local property taxes and local control of the spending level, the majority's requirement for absolute equality in the opportunity for school finances[2] will have this effect.

Our present system of school financing has three abilities or goals: (a) to provide a high level of equality in access to resources;[3] (b) to maintain a high level

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[1]The Selected Statistics is an official publication and all page and table references are to it unless otherwise indicated. The 1973-1974 school year is the first analyzed under Senate Bill No. 90 and Assembly Bill No. 1267.

[2]The majority state in a variety of ways that we may not allow the availability of educational opportunity to vary as a function of the assessed valuation per pupil. (Eg., *ante,* pp. 755, 756, 768.)

[3]Equal educational opportunity is an important goal of government. However, the majority do not concern themselves direct-

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of local control over the nature and amount of expenditure; and (c) to require a substantial level of fiscal responsibility. In a system where one branch of government finances in whole or in part another branch which is given control over the expenditure, the three goals are frequently in conflict. The majority's goal of absolute equitable opportunity for school financing means sacrificing either local control or fiscal responsibility. Our legislative and executive branches, no doubt based on their experience with numerous federal-state financing programs, have established a system in which the level of equal opportunity cannot be significantly

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ly with equal educational opportunity. Rather, they are concerned with whether there is equal opportunity for school funding, a test at least one step removed from the basic goal.

Because there are such great variations in our state, there is little reason to believe that district opportunity to equal funding will produce equal education opportunity. For instance, there is great variation in heating costs between our Sierra schools and our San Diego schools. Likewise, air conditioning is no doubt a major expense in Imperial Valley but will be relatively minor in coastside areas. School site costs in the center of San Francisco will be many times greater then the cost of an equal amount of land in Paso Robles. And, of course, the cost of living varies greatly throughout the state, indicating a need for salary differentials. There is no reason to assume that the numerous cost differentials faced by school districts offset each other and that somehow equal funding will result in equal educational opportunity.

More importantly, there is the additional question whether funding is directly related to educational opportunity or whether a more direct relationship exists between opportunity and other matters such as the ability and interests of one's classmates. Even with equal opportunity to funding, there will be disparate raising of funds because voters have vastly different ideas concerning facilities and priorities.

At trial expert testimony revealed there is no substantial correlation between the rich district-poor district assessed valuation on the one hand, and the level of student performance in statewide achievement tests on the other. Measured on a scale from one to ten, the correlation varied between positive two and negative one.

Nevertheless, for purposes of this opinion, the majority's thesis is assumed, that the equality which the courts should enforce is of funding rather than of educational opportunity.

increased without major sacrifice of local fiscal or administrative control.

The present system of school finance assures that every school district shall have access to certain funds per student at a fair local tax rate regardless of district wealth. The combination of the guaranteed amount and categorical aid not challenged in this action is equal to roughly 90 percent of the school budget in California—the equalized portion—leaving only about 10 percent which is affected by our current source of concern—district wealth. The potential 10 percent disparity in tax support among districts is small when viewed in light of the total educational commitment, and is fully justified by the traditional governmental interest in preserving local decision-making with local fiscal responsibility. The majority's attempt to abolish this small disparity, and in offering no substitute, will create greater inequality, frustrate local decision-making, or eliminate local fiscal responsibility.

This litigation has travelled through our courts for many years, having been before this court more than five years ago. (*Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187].) If the absolute equality demanded by the majority (see, *ante*, fn. 2) can be achieved without sacrificing local fiscal responsibility or local control and taxation required by article XIII, section 21, the majority have a duty to tell us how. *They have not because they cannot.*

Secondly, by repeatedly referring to "poor" districts and "rich" districts within the 10 percent disparity, and by holding there must be absolute equalization among districts, the majority assume the popular role of Robin Hood, appearing to take from the rich to

give to the poor. However, the question whether a governmental entity's assets should be adjusted is not the province of Robin Hood, of our state or federal Constitutions, or of this court. Rather, we must look beyond the governmental entity to the citizenry that government is designed to serve. When we do so, Robin Hood loses his disguise, and we find the Sheriff of Nottingham, taking from the poor to give to those more fortunate. Such reverse welfare is hardly compelled by the equal protection clause of any constitution.

EQUALITY, LOCAL CONTROL, AND FISCAL RESPONSIBILITY

A. *The Conflict in Goals*

The conflict in goals can best be illustrated by looking at the outlines of various methods of school financing and their effect on the three goals.

(1) The simplest method would appear to be total state financing of the district with the district given full control of the level of expenditure. Absolute equality of financial resources is assured because each district need only ask for funds and the state will comply. Local control is assured by definition. However, fiscal responsibility fails and the result is bankruptcy. A local district, being able to transfer all but insignificant costs to the state, will be unrestricted in spending for the benefit of its citizens on any school-related activity. Conceivably, every school district will have a performing arts center rivaling Los Angeles', resulting in insolvency.

(2) Of course total state financing might avoid bankruptcy by establishing spending limits, by apportioning the entire school expenditure on a per pupil basis, or by a combination of the two. While such

system might meet the goals of equality in funding resources and fiscal responsibility, it eliminates local control of spending levels.[4]

(3) At the other end of the spectrum would be purely local financing. This system satisfies the requirement of fiscal responsibility—requiring the community that spends the money to tax itself for the full amount. However, the system would be less equitable than that reviewed in *Serrano I*.[5]

(4) While the majority do not specify which system should be adopted, "power equalizing" appears to be their choice because it appears to be the one the majority measure against the existing system in order to arrive at invalidity. The system " 'has as its essential ingredient the concept that school districts could choose to spend at different levels but for each level of expenditure chosen the tax effort would be the same for each school district choosing such level whether it be a high-wealth or a low-wealth district.' " (*Ante*, p. 747.)

The latter system is easily illustrated using hypothetical figures. If the tax rate is $2 it must produce

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[4]For the above reasons, the first system of school support suggested by the trial court, full state funding (*ante*, p. 747) should be rejected. Moreover, total state funding would violate the requirements of partial local financing and control imposed by article XIII, section 21 of our Constitution.

[5]Theoretically, we could achieve all three goals by redrawing the district lines to have substantial equality of assessed value per student in every district. However, because the number of students and assessed valuations change each year, the boundary lines would have to be redrawn every year or two. A single, successful wildcat oil well might require a statewide redistricting with the consequent reassignment of students and teachers. Each large new subdivision would also require redistricting. Obviously, the system would involve huge waste and the second system suggested by the trial court (*ante*, p. 747) must be rejected.

the same amount of income per pupil in every district in the state, let us assume $800. If the tax rate in any district is $3, the district must receive the same amount per pupil, let us assume $1,200. These amounts must be received regardless of the wealth of the school district. Obviously, in poor districts, those with low assessed valuation per pupil, the tax will not produce sufficient revenue, and the state will have to provide the difference. In rich districts, the given tax rates will produce excessive revenue, with the state obtaining the excess.

To illustrate the impact of the system on the districts, let us look at the effect on three kinds of districts, one having assessed valuation producing the exact amount of money set forth above, the second having half that assessed valuation (a poor district), and the third having double the assessed valuation, (a rich district). In the first district fiscal responsibility is assured because school board members, considering expenditures, will have to tax their constituency for all expenditures. In the second or poor district an element of fiscal irresponsibility is introduced. For there, every dollar the school board members decide to spend, only a half dollar need be raised from the constituency, the state paying the other half. The poor district is encouraged to raise its tax rate to obtain state funding for the community, purchasing educational opportunity at the half-price sale. Because the higher the tax rate, the more state money and the greater bargain, the poor district is encouraged to adopt a high tax rate, funding programs the first district would not undertake. This, of course, is the basic spending incentive involved in partial federal support for state programs.

The third or rich district, on the other hand, will be penalized for any expenditure. For every dollar

it seeks to spend for its students it must raise $2 by tax, sending one to Sacramento. Faced with punishing their constituency for each expenditure, the school board members will restrain expenditure by eliminating programs the first and second districts would undertake.

Viewed from the standpoint of dollar cost to the district, rather than tax rate, illustration number 4 presents a mirror image of illustration number 3, not equalizing but presenting an inverse relationship between district wealth and opportunity to fund schools. The rich district will become poor by its disincentive to spend, and the poor will become rich by its substantial incentive to spend. The fact that at any given tax rate, expenditure may be equal in each district does not eliminate either the troublesome disincentive or the incentive. Both render the opportunity for school funding unequal. The opportunity varies with the assessed valuation per student within districts—inversely it is true—but by varying with district wealth, it necessarily violates the majority's basic requirement that no such variation be permitted.[6] (See, e.g., *ante,* p. 747.)

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[6]The trial court also suggests that commercial and industrial property be removed from local school tax rolls, taxing such property at the state level. (*Ante,* pp. 755-756, 768.) Apparently, the suggestion is based on the trial court's finding that the principal cause of inequality in the assessed valuation per student is due to the presence in some districts of industrial and commercial property. However, this would still leave inequalities due to the great differences in residential property values and in the ratio of public school students to the total population of a district. There is no indication that the resulting inequities would be less than under the present system. Baldwin Park and Beverly Hills, the two school districts used in *Serrano I* to illustrate great inequality, are both primarily residential districts.

A system of vouchers was also suggested (*id.*) but that system is closely related to family wealth.

(5) The four school support systems illustrated above are the basic systems, given that financing depends upon property tax. Although other systems have been suggested (see, *ante,* fns. 5, 6), they involve either great waste of resources or lack assurance they will result in significantly greater equality than the existing system. However, before looking at the existing system, a few observations are warranted. Only the first two systems (total statewide financing) can produce the majority's requirement of absolute financial equality. The first, as we have seen, involves a substantial risk, if not a certainty, of insolvency. The second avoids bankruptcy but *totally* eliminates local control of expenditure levels. The third and fourth systems (local financing) necessarily involve a relationship between district wealth and the opportunity for educational funding, direct or inverse, in violation of the majority's rule prohibiting any such wealth relationship.

Further, to the extent the third and fourth systems are used significantly, some wealth realtionship in the opportunity for educational funding will occur. This results because local school board members—properly concerned with their constituency—will always look to the local effect of their action. In a democracy we can expect no less. Considering expenditures on the fundamental issue of whether to hire more teachers, reducing class size, or to hire fewer teachers, increasing class size, local school board members must ask what burdens in dollars and tax rates are being placed on district residents. In other words, unless state funding covers substantially all costs, the marginal expenditure is going to be based on local funding considerations. Local financing systems three and four, as we have seen, necessarily involve wealth relationships—direct

or inverse—and to any extent that they are used, school funding will be based on wealth relationships.

The rational approach to the three conflicting goals of equality, fiscal responsibility and local control, requires rejecting the majority's demand for absolute equality and accepting a combined system to accommodate each. Minor departure from the ideal of absolute equality must be allowed in order to accommodate the two other compelling interests. The existing system does no more.

I have delayed evaluating our existing school finance system because it must be viewed in the light of alternate systems. The present system is the legislative and executive response to this court's first *Serrano* decision within the confines of our Constitution's requirements of a mixed system of state and local financing and control. (Art. IX, § 6; art. XII, §§ 20, 21.) The system starts with system number 4, power equalizing, giving the poorer school districts an incentive to tax at the computational rate, $2.23 at the elementary level, and to receive the foundation level, $765 per student. An assessed valuation of $28,700 per student at a tax rate of $2.23 will produce $640 per student which when added to the $125 required to be paid for all students[7] will produce the $765 figure. A district having an assessed valuation below $28,700 will not receive the $765 per student from its local taxes and the $125 allowance, and the state will make

[7]The $125 per student is not strictly speaking power equalizing. However, $120 of the $125 allotted on a per student basis is required by article IX, section 6, of our Constitution, the same Constitution imposing equal protection requirements involved here. To the extent this $120 produces, inequality it is an exception to the equal protection requirement. It was improper for the trial court (*ante,* p. 744) to posit its determination of invalidity on this factor.

up the balance. More than 85 percent of the students in this state are in districts having an assessed valuation of less than $28,700 per student. (Table III-8, p. 28.) These districts are called the equalization aid districts.

The principal criticism level against this part of the financial program is the limitation to $765, which means that for financing above that level the inequities of system 3 come into play. Why shouldn't the program of state aid extend on indefinitely to levels above $765? The answer should be apparent by now. The equalization factor produces inverse wealth relationships because the poor districts are encouraged to spend to bring state money to the community. Thus, some limitation must be placed on this type of financing, and as will appear, the $765 level is eminently reasonable.

The power equalizing approach is not carried forward to those districts having assessed valuation of more than $28,700 per student. (Nearly 15 percent of the students are in those districts.) The Legislature determined not to apply the penalizing factor discussed above. This means that a district having, for example, double the $28,700 per student assessed valuation could provide $765 per student at a tax rate of little over half the computational rate of $2.23. About 2½ percent of the elementary students are in school districts having double assessed valuation or more. (Table III-8, p. 28.)

The principal criticism levelled against this factor of the system is that a few rich districts may have relatively low tax rates while still providing $765 per student. Although the factor gives rise to some inequality, the alternative of penalizing the rich district by

giving part of its local funds to the state will impose new inequities in the opportunity for school funding—inequities much greater in practical effect than existing ones.[8]

The real question is how great is the inequality—not in abstract legal terms—but under the system as it really works. Our concern should not be that there may exist a district possessing $1 million assessed valuation per student, but possessing only 38 students. To use the example of this district and a few more like it to invalidate the statewide system is unfair, if not folly. Rather, to measure the existing system we must attempt to weigh inequality against the total system.

At trial, prior to the Senate Bill No. 90 and Assembly Bill No. 1267 results becoming available, attempt was made to quantify the inequalities arising under the new law in terms of total school fund revenues to be produced. The prediction was that 76 percent of the revenues would arise under the foundation program, the equalized revenues, 15 percent of the revenues would be categorical funds assumed to be equalized in this proceeding, and only 9 percent unequalized. Subsequently, records of the Los Angeles unified school districts, comprising 28 percent of the state's students, showed that only 10 percent of the budget constituted unequalized funds. In addition, the basic statewide figure showing an average current expenditure per elementary student of $985.48 (table IV-1A, p. 84) when

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[8]In addition, the existing system places spending limitations on the rich district. The trial court and the majority discuss at length whether the limitations are real or illusory. The spending limitation is a further equalizing factor if anything, and because I believe the basic factors do not deny equal protection, it is unnecessary to discuss the spending limitations and their exceptions.

compared with the $765 equalization aid figure, roughly indicates the correctness of the testimony.[9]

By setting the equalization aid figure at such a high number, resulting in aid to more than 85 percent of our students, the present system insures a high degree of equality. Ninety percent of the funding is distributed on an equitable basis with only 10 percent distributed inequitably. Further, even as to the 10 percent, poor school districts may and do obtain part by merely raising their tax rate above $2.23.

As we have seen, attempting to eliminate all inequality—the majority's perfection requirement—will result in insolvency, loss of local control, or in new and greater inequity. Substantial reduction in the 10 percent revenue inequality similarly appears to involve substantial risks of insolvency, loss of local control, or the new inequity.

The majority attack the 90-10 ratio on three levels. First, they say it does not meet the requirement of absolute equality. (*Ante*, p. 755.) However, as pointed out above, the requirement should not be imposed. Second, the majority state that the 90-10 ratio, based on the 1973-1974 year, does not take into account inflation and declining future enrollment. (*Ante*, pp. 755-756.) However, the Legislature has provided for increases in foundational programs based in part on increases in assessed valuation, an indicator of inflation. (Ed. Code, § 17669.) The declining enrollment argument is that aid will decrease under the foundation program because there will be fewer students but that

[9]When the approximately 15 percent of categorical aid is eliminated from the average of $985.48, the average payment becomes $837.67 which should be compared with the $765 equalization aid figure to roughly measure the inequality of opportunity.

costs will decrease at a slower rate. But by looking at an historical cost relationship, the majority depart from their own equality test, introducing a new one. Third, the majority state that the ratio of 90 percent equalized to 10 percent unequalized is false, urging that foundation funds are unequalized. (*Ante*, p. 757.) But the basic purpose of equalization aid has been to offset inequities in the foundation. Although the punishment factor has been omitted, it would apply only to districts having less than 15 percent of all our students, and would significantly apply to a much smaller percentage. For this reason any adjustment in quantifying the inequalities would be minimal.

RICH AND POOR

The impact of today's decision will require transferring school funding resources from the rich districts to the poor districts—there being little effect on the many districts which are neither rich nor poor. In our urban-suburban complexes where most students live, a rich district does not mean a district of rich people but is ordinarily one of poor residents, while a poor district is ordinarily one of more fortunate people. The impact of today's opinion appears to be a transfer of resources from poor people to those more fortunate.

The determination whether a district is rich or poor depends upon its assessed valuation per student. Thus, the presence of large tracts of property not occupied by children attending local public schools tends to make a district rich. Absence of such property tends to make a district poor. Bearing this in mind, we can in general identify the so-called rich and poor districts.

Rich districts will include extensive commercial or industrial property or both, while the poorer ones will

possess little of such property, either having zoned it out or having not attracted it. Rich districts will possess a low ratio of public school students to the total population—poor ones a high ratio.

With these considerations, we can further identify the rich and poor districts. Although exceptions exist,[10] rich districts comprise the older commercial-industrial areas. Because of the transition of relatively affluent families to the suburbs to raise families, the parents in rich districts tend to be poorer than the average.[11] The poor districts on the other hand are those having substantial new housing subdivisions but lacking commercial-industrial bases. They have a high ratio of students to total population. Parents who can afford to purchase new homes to raise their families are ordinarily more affluent than those residing in the older commercial-industrial areas.

This analysis of poor and rich districts is confirmed by numerous studies (see *Zelinsky, Educational Equalization and Suburban Sprawl: Subsidizing The Suburbs Through School Finance Reform* (1976) 71 Nw.U.L. Rev. 161, 162, 182-184, and authorities collected) and by my study of the poor and rich districts in the 1973-1974 school year. (Table IV-11, pp. 93-123.) Further, the trial record discloses a number of illustrations where the mature industrial-commercial

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[10]The exceptions are the mature, very wealthy residential areas of Beverly Hills and Hillsborough, and the second home vacation areas of Lake Tahoe and Palm Springs.

[11]San Francisco Unified School District is one of the richest in the state. Besides its large amount of commercial and industrial property, the ratio of school children to general population is smaller than the statewide average, and the percentage of students attending private schools is higher than the statewide average. Per capita income is lower than the statewide average and the surrounding counties.

community has a much higher assessed valuation per pupil than the nearby new suburban area (in some cases more than double). But the latter has a much higher per capita income than the former (again sometimes a two-to-one relationship).

The rich districts being primarily poor people districts, and the poor ones composed of people more fortunate economically, I cannot believe that equal protection requires us to take from the poor to give to the more fortunate.

CONCLUSION

I conclude that we cannot have absolute equality of opportunity in school funding—and perhaps not in any other sector of governmental activity. The absolute equality demanded by today's majority opinion is particularly unobtainable if fiscal responsibility and local control—both compelling interests—shall be preserved. While California's present system for school financing may be less than perfect and although it departs from total equality, the minor departure is jsutfied and the system should be upheld. Furthermore, invalidation takes from the poor and gives to those more fortunate—hardly the goal of equal protection.

I would reverse the judgment.

McComb, J., concurred.

APPENDIX B.

Modification of Opinion in "Serrano II".

In the Supreme Court of the State of California.

John Serrano, Jr., et al., Plaintiffs and Respondents, v. Ivy Baker Priest, as State Treasurer, etc., et al. Defendants and Appellants, and California Federation of Teachers, AFL-CIO, Intervenor and Respondent, and Beverly Hills Unified School District, et al., Intervenors and Appellants. L.A. 30398, (Super. Ct. No. C 938 254).

Filed: February 1, 1977.

MODIFICATION OF OPINION

BY THE COURT:

It is ordered that the opinion filed herein on December 30, 1976, appearing in the California Official Reports at [18] Cal.3d [728], be modified in the following particulars:

The dispositive order of judgment, appearing on page [777],* is modified by adding thereto the following sentence:

"We reserve jurisdiction for the purpose of considering and passing upon respondents' motion for an award of attorneys' fees on appeal, filed January 28, 1977."

The dispositive order as so modified reads:

> The judgment is affirmed. We reserve jurisdiction for the purpose of considering and passing upon respondents' motion for an award of attorneys' fees on appeal, filed January 28, 1977.

The judgment and this order are final forthwith.

Multilith opinion, page 81.

APPENDIX C.

Opinion of the California Supreme Court in "Serrano I". Reported in 5 Cal.3d 584; 96 Cal.Rptr. 601, 487 P.2d 1241.

[L.A. No. 29820. In Bank. Aug. 30, 1971.]

John Serrano, Jr., et al., Plaintiffs and Appellants, v. Ivy Baker Priest, as State Treasurer, etc., et al., Defendants and Respondents.

SUMMARY

Public school children and their parents commenced a class suit challenging the constitutionality of the public school financing system. The first cause of action alleged that the system, by producing substantial disparities among the various school districts in the amount of revenue available for education, denied the children equal protection of the laws under the United States and California Constitutions. The second cause of action, incorporating the first, alleged that as a result of the system the parents were required to pay taxes at a higher rate than taxpayers in many other districts in order to secure for their children the same or lesser educational opportunities. The third cause of action, incorporating the other two, sought a declaratory judgment that the present system was unconstitutional; in addition, plaintiffs prayed for an order directing defendants to make a remedial reallocation of school funds, and for an adjudication that the trial court retain jurisdiction to restructure the system if defendants and the state Legislature failed to act within a reasonable time. All defendants filed general demurrers to the complaint, asserting that none of the three claims stated facts

sufficient to constitute a cause of action. The trial court sustained the demurrers with leave to amend, and on plaintiffs' failure to do so, granted defendants' motion for dismissal. (Superior Court of Los Angeles County, No. 938254, Robert W. Kenny, Judge.)

The Supreme Court reversed the judgment of dismissal and remanded with directions to overrule the demurrers and allow defendants a reasonable time to answer. The court held that although uniform education expenditures were not mandated by Cal. Const. art. IX, § 5, requiring the Legislature to provide for a system of common schools, judicial review under the equal protection clause required active and critical analysis in the case of legislation involving suspect classifications or touching on fundamental interests, and that under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a compelling interest that justifies the law but also that the distinctions drawn by the law are necessary to further its purpose. From the point of view of equal protection in the context of instant case, education is a "fundamental interest," wealth is a highly suspect classification, and the school financing system not only involves a classification based on the wealth of the school districts and their residents, but is also unnecessary for the accomplishment of any compelling state interest. Thus, accepting as true the allegations in the complaint as supplemented by matters judicially noticed by the Supreme Court, plaintiffs clearly stated causes of action sufficient to withstand the demurrers. The court rejected defendants' argument that an independent examination of the equal protection issues was foreclosed by an earlier summary affirmance, by the United States Supreme Court, of a ruling by a three-judge

district court to the effect that a challenge to Illinois's school financing system was nonjudiciable. The court also pointed out that although the equal protection clause may command that the relative wealth of school districts may not determine the quality of public education, it would not necessarily follow that the equal protection clause directs an equivalent command to all government entities in respect to all tax-supported public services. Further contentions by defendants were held to be without merit. The court pointed out for the benefit of the trial court that if, after further proceedings, it should enter a final judgment that the existing system of public school financing was unconstitutional, it could properly provide for the enforcement of the judgment in such a way as to permit an orderly transition to a constitutional system, until which time the existing system would remain operable. (Opinion by Sullivan, J., with Wright, C. J., Peters, Tobriner, Mosk and Burke, JJ., concurring, McComb, J., dissented.)

COUNSEL

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Francis Foran and Leo T. McCarthy as Amici Curiae on behalf of Plaintiffs and Appellants.

Evelle J. Younger and Thomas C. Lynch, Attorneys General, Sanford N. Gruskin and Ernest P. Goodman, Assistant Attorneys General, John D. Maharg, County Counsel, James W. Briggs, Assistant County Counsel, Elaine M. Grillo, Donovan M. Main and DeWitt W. Clinton, Deputy County Counsel, for Defendants and Respondents.

OPINION

SULLIVAN, J.—We are called upon to determine whether the California public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the equal protection clause of the Fourteenth Amendment. We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause.

Plaintiffs, who are Los Angeles County public school children and their parents, brought this class action for declaratory and injunctive relief against certain state and county officials charged with administering the financing of the California public school system. Plaintiff children claim to represent a class consisting of all public school pupils in California, "except children

in that school district, the identity of which is presently unknown, which school district affords the greatest educational opportunity of all school districts within California. Plaintiff parents purport to represent a class of all parents who have children in the school system and who pay real property taxes in the county of their residence.

Defendants are the Treasurer, the Superintendent of Public Instruction, and the Controller of the State of California, as well as the Tax Collector and Treasurer, and the Superintendent of Schools of the County of Los Angeles. The county officials are sued both in their local capacities and as representatives of a class composed of the school superintendent, tax collector and treasurer of each of the other counties in the state.

The complaint sets forth three causes of action. The first cause alleges in substance as follows: Plaintiff children attend public elementary and secondary schools located in specified school districts in Los Angeles County. This public school system is maintained throughout California by a financing plan or scheme which relies heavily on local property taxes and causes substantial disparities among individual school districts in the amount of revenue available per pupil for the districts' educational programs. Consequently, districts with smaller tax bases are not able to spend as much money per child for education as districts with larger assessed valuations.

It is alleged that "As a direct result of the financing scheme . . . substantial disparities in the quality and extent of availability of educational opportunities exist and are perpetuated among the several school districts

of the State. . . . [Par.] The educational opportunities made available to children attending public schools in the Districts, including plaintiff children, are substantially inferior to the educational opportunities made available to children attending public schools in many other districts of the State. . . ." The financing scheme thus fails to meet the requirements of the equal protection clause of the Fourteenth Amendment of the United States Constitution and the California Constitution in several specified respects.[1]

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[1]The complaint alleges that the financing scheme:

"A. Makes the quality of education for school age children in California, including Plaintiff Children, a function of the wealth of the children's parents and neighbors, as measured by the tax base of the school district in which said children reside, and

"B. Makes the quality of education for school age children in California, including Plaintiff Children, a function of the geographical accident of the school district in which said children reside, and

"C. Fails to take account of any of the variety of educational needs of the several school districts (and of the children therein) of the State of California, and

"D. Provides students living in some school districts of the State with material advantage over students in other school districts in selecting and pursuing their educational goals, and

"E. Fails to provide children of substantially equal age, aptitude, motivation, and ability with substantially equal educational resources, and

"F. Perpetuates marked differences in the quality of educational services, equipment and other facilities which exist among the public school districts of the State as a result of the inequitable apportionment of State resources in past years.

"G. The use of the 'school district' as a unit for the differential allocation of educational funds bears no reasonable relation to the California legislatiave purpose of providing equal educational opportunity for all school children within the State.

"H. The part of the State financing scheme which permits each school district to retain and expend within that district all of the property tax collected within that district bears no reasonable relation to any educational objective or need.

"I. A disproportionate number of school children who are black children, children with Spanish surnames, children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided."

In the second cause of action, plaintiff parents, after incorporating by reference all the allegations of the first cause, allege that as a direct result of the financing scheme they are required to pay a higher tax rate than taxpayers in many other school districts in order to obtain for their children the same or lesser educational opportunities afforded children in those other districts.

In the third cause of action, after incorporating by reference all the allegations of the first two causes, all plaintiffs allege that an actual controversy has arisen and now exists between the parties as to the validity and constitutionality of the financing scheme under the Fourteenth Amendment of the United States Constitution and under the California Constitution.

Plaintiffs pray for: (1) a declaration that the present financing system is unconstitutional; (2) an order directing defendants to reallocate school funds in order to remedy this invalidity; and (3) an adjudication that the trial court retain jurisdiction of the action so that it may restructure the system if defendants and the state Legislature fail to act within a reasonable time.

All defendants filed general demurrers to the foregoing complaint asserting that none of the three claims stated facts sufficient to constitute a cause of action. The trial court sustained the demurrers with leave to amend. Upon plaintiffs' failure to amend, defendants' motion for dismissal was granted. (Code Civ. Proc., § 581, subd. 3.) An order of dismissal was entered (Code Civ. Proc., § 581d), and this appeal followed.

Preliminarily we observe that in our examination of the instant complaint, we are guided by the long-

settled rules for determining its sufficiency against a demurrer. (1) We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 713 [63 Cal.Rptr. 724, 433 P.2d 732].) We also consider matters which may be judicially noticed. (*Id.* at p. 716.) Accordingly, from time to time herein we shall refer to relevant information which has been drawn to our attention either by the parties or by our independent research; in each instance we judicially notice this material since it is contained in publication of state officers or agencies. (*Board of Education v. Watson* (1966) 63 Cal.2d 829, 836, fn. 3 [48 Cal.Rptr. 481, 409 P.2d 481]; see Evid. Code, § 452, subd. (c).)

I

We begin our task by examining the California public school financing system which is the focal point of the complaint's allegations. At the threshold we find a fundamental statistic—over 90 percent of our public school funds derive from two basic sources: (a) local district taxes on real property and (b) aid from the State School Fund.[2]

By far the major source of school revenue is the local real property tax. Pursuant to article IX, section 6 of the California Constitution, the Legislature has authorized the governing body of each county, and city and county, to levy taxes on the real property

[2]California educational revenues for the fiscal year 1968-1969 came from the following sources: local property taxes, 55.7 percent; state aid, 35.5 percent; federal funds, 6.1 percent; miscellaneous sources, 2.7 percent. (Legislative Analyst, Public School Finance, Part. I, Expenditures for Education (1970) p. 5. Hereafter referred to as Legislative Analyst.)

within a school district at a rate necessary to meet the district's annual education budget. (Ed. Code, § 20701 et seq.)[3] The amount of revenue which a district can raise in this manner thus depends largely on its tax base—i.e., the assessed valuation of real property within its borders. Tax bases vary widely throughout the state; in 1969-1970, for example, the assessed valuation per unit of average daily attendance of elementary school children[4] ranged from a low of $103 to a peak of $952,156—a ratio of nearly 1 to 10,000. (Legislative Analyst, Public School Finance, Part V, Current Issues in Educational Finance (1971) p. 7.)[5]

The other factor determining local school revenue is the rate of taxation within the district. Although the Legislature has placed ceilings on permissible district tax rates (§ 20751 et seq.), these statutory maxima may be surpassed in a "tax override" election if a majority of the district's voters approve a higher rate.

[3]Hereafter, unless otherwise indicated, all section references are to the Education Code.

[4]Most school aid determinations are based not on total enrollment, but on "average daily attendance" (ADA), a figure computed by adding together the number of students actually present on each school day and dividing that total by the number of days school was taught. (§§ 11252, 11301, 11401.) In practice, ADA approximates 98 percent of total enrollment. (Legislative Analyst, Public School Finance, Part IV, Glossary of Terms Most Often Used in School Finance (1971) p. 2.) When we refer herein to figures on a "per pupil" or "per child" basis, we mean per unit of ADA.

[5]Over the period November 1970 to January 1971 the legislative analyst provided to the Legislature a series of five reports which "deal with the current system of public school finance from kindergarten through the community college and are designed to provide a working knowledge of the system of school finance." (Legislative Analyst, Part I, *supra,* p. 1.) The series is as follows: Part I, Expenditures for Education; Part II, The State School Fund: Its Derivation and Distribution; Part III, The Foundation Program; Part IV, Glossary of Terms Most Often Used in School Finance; Part V, Current Issues in Education Finance.

(§ 20803 et seq.) Nearly all districts have voted to override the statutory limits. Thus the locally raised funds which constitute the largest portion of school revenue are primarily a function of the value of the realty within a particular school district, coupled with the willingness of the district's residents to tax themselves for education.

Most of the remaining school revenue comes from the State School Fund pursuant to the "foundation program," through which the state undertakes to supplement local taxes in order to provide a "minimum amount of guaranteed support to all districts . . . ." (§ 17300.) With certain minor exceptions,[6] the foundation program ensures that each school district will receive annually, from state or local funds, $355 for each elementary school pupil (§§ 17656, 17660) and $488 for each high school student. (§ 17665.)

The state contribution is supplied in two principal forms. "Basic state aid" consists of a flat grant to each district of $125 per pupil per year, regardless of the relative wealth of the district. (Cal. Const., art. IX, § 6, par. 4; Ed. Code, §§ 17751, 17801.) Equalization aid is distributed in inverse proportion to the wealth of the district.

To compute the amount of equalization aid to which a district is entitled, the State Superintendent of Public

[6]Districts which maintain "unnecessary small schools" receive $10 per pupil less in foundation funds. (§ 17655.5 et seq.)
Certain types of school districts are eligible for "bonus" foundation funds. Elementary districts receive an additional $30 for each student in grades 1 through 3; this sum is intended to reduce class size in those grades. (§ 17674.) Unified school districts get an extra $20 per child in foundation support. (§§ 17671-17673.)

Instruction first determines how much local property tax revenue would be generated if the district were to levy a hypothetical tax at a rate of $1 on each $100 of assessed valuation in elementary school districts and $.80 per $100 in high school Districts.[7] (§ 17702.) To that figure, he adds the $125 per pupil basic aid grant. If the sum of those two amounts is less than the foundation program minimum for that district, the state contributes the difference. (§§ 17901, 17902.) Thus, equalization funds guarantee to the poorer districts a basic minimum revenue, while wealthier districts are ineligible for such assistance.

An additional state program of "supplemental aid" is available to subsidize particularly poor school districts which are willing to make an extra local tax effort. An elementary district with an assessed valuation of $12,500 or less per pupil may obtain up to $125 more for each child if it sets its local tax rate above a certain statutory level. A high school district whose assessed valuation does not exceed $24,500 per pupil is eligible for a supplement of up to $72 per child if its local tax is sufficiently high. (§§ 17920-17926.)[8]

[7]This is simply a "computational" tax rate used to measure the relative wealth of the district for equalization purposes. It bears no relation to the tax rate actually set by the district in levying local real property taxes.

[8]Some further equalizing effect occurs through a special areawide foundation program in districts included in reorganization plans which were disapproved at an election. (§ 17680 et seq.) Under this program, the assessed valuation of all the individual districts in an area is pooled, and an actual tax is levied at a rate of $1 per $100 for elementary districts and $.80 for high school districts. The resulting revenue is distributed among the individual districts according to the ratio of each district's foundation level to the areawide total. Thus, poor districts effectively share in the higher tax bases of their wealthier neighbors. However, any district is still free to tax itself at a rate higher than $1 or $.80; such additional revenue is retained entirely by the taxing district.

Although equalization aid and supplemental aid temper the disparities which result from the vast variations in real property assessed valuation, wide differentials remain in the revenue available to individual districts and, consequently, in the level of educational expenditures.[9] For example, in Los Angeles County, where plaintiff children attend school, the Baldwin Park Unified School District expended only $577.49 to educate each of its pupils in 1968-1969; during the same year the Pasadena Unified School District spent $840.19 on every student; and the Beverly Hills Unified School District paid out $1,231.72 per child. (Cal. Dept. of Ed., Cal. Public Schools, Selected Statistics 1968-1969 (1970) Table IV-11, pp. 90-91.) The source of these disparities is unmistakable: in Baldwin Park the assessed valuation per child totaled only $3,706;

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[9]Statistics compiled by the legislative analyst show the following range of assessed valuations per pupil for the 1969-1970 school year:

	Elementary	*High School*
Low	$ 103	$ 11,959
Median	19,600	41,300
High	952,156	349,093

(Legislative Analyst, Part V, *supra*, p. 7.)

Per pupil expenditures during that year also varied widely:

	Elementary	*High School*	*Unified*
Low	$ 407	$ 722	$ 612
Median	672	898	766
High	2,586	1,767	2,414

(*Id.* at p. 8.)

Similar spending disparities have been noted throughout the country, particularly when surburban communities and urban ghettos are compared. (See, e,g., Report of the National Advisory Commission on Civil Disorders (Bantam ed. 1968) pp. 434-436; U.S. Commission on Civil Rights, Racial Isolation in the Public Schools (1967) pp. 25-31; Conant, Slums and Suburbs (1961) pp. 2-3; *Levi, The University, The Professions, and the Law* (1968) 56 Cal.L.Rev. 251, 258-259.)

in Pasadena, assessed valuation was $13,706; while in Beverly Hills, the corresponding figures was $50,885 —a ratio of 1 to 4 to 13. (*Id.*) Thus, the state grants are inadequate to offset the inequalities inherent in a financing system based on widely varying local tax bases.

Furthermore, basic aid, which constitutes above half of the state educational funds (Legislative Analyst, Public School Finance, Part II, The State School Fund: Its Derivation, Distribution and Apportionment (1970) p. 9), actually widens the gap between rich and poor districts. (See Cal. Senate Fact Finding Committee on Revenue and Taxation, State and Local Fiscal Relationships in Public Education in California (1965) p. 19.) Such aid is distributed on a uniform per pupil basis to all districts, irrespective of a district's wealth. Beverly Hills, as well as Baldwin Park, receives $125 from the state for each of its students.

For Baldwin Park the basic grant is essentially meaningless. Under the foundation program the state must make up the difference between $355 per elementary child and $47.91, the amount of revenue per child which Baldwin Park could raise by levying a tax of $1 per $100 of assessed valuation. Although under present law, that difference is composed partly of basic aid and partly of equalization aid, if the basic aid grant did not exist, the district would still receive the same amount of state aid—all in equalizing funds.

For Beverly Hills, however, the $125 flat grant has real financial significance. Since a tax rate of $1 per $100 there would produce $870 per elementary student, Beverly Hills is far too rich to qualify for equalizing aid. Nevertheless, it still receives $125 per child from

the state, thus enlarging the economic chasm between it and Baldwin Park. (See Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test of State Financial Structures* (1969) 57 Cal.L. Rev. 305, 315.)

II

Having outlined the basic framework of California school financing, we take up plaintiffs' legal claims. Preliminarily, we reject their contention that the school financing system violates article IX, section 5 of the California Constitution, which states, in pertinent part: "The Legislature shall provide for *a system of common schools* by which a free school shall be kept up and supported in each district at least six months in every year . . . ." (Italics added.)[10] Plaintiffs' argument is that the present financing method produces separate and distinct systems, each offering an educational program which varies with the relative wealth of the district's residents.

We have held that the word "system," as used in article IX, section 5, implies a "unity of purpose as well as an entirety of operation, and the direction to the legislature to provide 'a' system of common schools means *one* system which shall be applicable to all the common schools within the state." (*Kennedy v. Miller* (1893) 97 Cal. 429, 432 [32 P. 558].) However, we have never interpreted the constitutional provision to require equal school spending; we have ruled

[10]Plaintiffs' complaint does not specifically refer to article IX, section 5. Rather it alleges that the financing system "fails to meet minimum requirements of the . . . fundamental law and Constitution of the State of California," citing several other provisions of the state Constitution. Plaintiffs' first specific reference to article IX, section 5 is made in their brief on appeal. We treat plaintiffs' claim under this section as though it had been explicitly raised in their complaint.

only that the educational system must be uniform in terms of the prescribed course of study and educational progression from grade to grade. (*Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 669, 673 [226 P. 926].)

We think it would be erroneous to hold otherwise. While article IX, section 5 makes no reference to school financing, section 6 of that same article specifically authorizes the very element of the fiscal system of which plaintiffs complain. Section 6 states, in part: "The Legislature shall provide for the levying annually by the governing board of each county, and city and county, of such school district taxes, at rates . . . as will produce in each fiscal year such revenue for each school district as the governing board thereof shall determine is required . . . ."

Elementary principles of construction dictate that where constitutional provisions can reasonably be construed to avoid a conflict, such an interpretation should be adopted. (*People v. Western Airlines, Inc.* (1954) 42 Cal.2d 621, 637 [268 P.2d 723], app. dism. (1954) 348 U.S. 859 [99 L.Ed. 677, 75 S.Ct. 87].) This maxim suggests that section 5 should not be construed to apply to school financing otherwise it would clash with section 6. If the two provisions were found irreconcilable, section 6 would prevail because it is more specific and was adopted more recently. (*Id.; County of Placer v. Aetna Cas. etc. Co.* (1958) 50 Cal.2d 182, 189 [323 P.2d 753].) Consequently, we must reject plaintiffs' argument that the provision in section 5 for a "system of common schools" requires uniform educational expenditures.

III

Having disposed of these preliminary matters, we take up the chief contention underlying plaintiffs' complaint, namely that the California public school financing scheme violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.[11]

As recent decisions of this court have pointed out, the United States Supreme Court has employed a two-level test for measuring legislative classifications against the equal protection clause. "In the area of economic regulation, the high court has exercised restraint, investing legislation with a presumption of constitutionality and requiring merely that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose. [Citations.]

"On the other hand, in cases involving 'suspect classifications' or touching on 'fundamental interests,' [fns. omitted] the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. [Citations.] Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn

[11]The complaint also alleges that the financing system violates article I, sections 11 and 21, of the California Constitution. Section 11 provides: "All laws of a general nature shall have a uniform operation." Section 21 states: "No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens." We have construed these provisions as "substantially the equivalent" of the equal protection clause of the Fourteenth Amendment to the federal Constitution. (*Dept. of Mental Hygiene v. Kirchner* (1965) 62 Cal.2d 586, 588 [43 Cal.Rptr. 329, 400 P.2d 321].) Consequently, our analysis of plaintiffs' federal equal protection contention is also applicable to their claim under these state constitutional provisions.

by the law are *necessary* to further its purpose." (*Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal.Rptr. 839, 471 P.2d 487], vacated on other grounds (1971) 403 U.S. 915 [29 L.Ed.2d 692, 91 S.Ct. 2224]; *In re Antazo* (1970) 3 Cal.3d 100, 110-111 [89 Cal.Rptr. 255, 473 P.2d 999]; see *Purdy & Fitzpatrick v. State of California* (1969) 71 Cal. 2d 566, 578-579 [79 Cal.Rptr. 77, 456 P.2d 645].)

A

Wealth as a Suspect Classification

In recent years, the United States Supreme Court has demonstrated a marked antipathy toward legislative classifications which discriminate on the basis of certain "suspect" personal characteristics. One factor which has repeatedly come under the close scrutiny of the high court is wealth. "Lines drawn on the basis of wealth or property, like those of race [citation], are traditionally disfavored." (*Harper v. Virginia Bd. of Elections* (1966) 383 U.S. 663, 668 [16 L.Ed.2d 169, 173, 86 S.Ct. 1079].) Invalidating the Virginia poll tax in *Harper*, the court stated: "To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor." (*Id.*) "[A] careful examination on our part is especially warranted where lines are drawn on the basis of wealth . . . [a] factor which would independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny. [Citations.]" (*McDonald v. Board of Elections* (1969) 394 U.S. 802, 807 [22 L.Ed.2d 739, 744, 89 S.Ct. 1404]. See also *Tate v. Short* (1971) 401 U.S. 395 [28 L.Ed.2d 130, 91 S.Ct. 668]; *Williams v. Illinois* (1970) 399 U.S. 235 [26 L.Ed. 2d 586, 90 S.Ct. 2018]; *Roberts v. La Vallee* (1967) 389 U.S. 40 [19 L.Ed.2d

41, 88 S.Ct. 194]; *Anders v. California* (1967) 386 U.S. 738 [18 L.Ed.2d 493, 87 S.Ct. 1396]; *Douglas v. California* (1963) 372 U.S. 353 [9 L.Ed.2d 811, 83 S.Ct. 814]; *Smith v. Bennett* (1961) 365 U.S. 708 [6 L.Ed.2d 39, 81 S.Ct. 895]; *Burns v. Ohio* (1959) 360 U.S. 252 [3 L.Ed.2d 1209, 79 S.Ct. 1164]; *Griffin v. Illinois* (1956) 351 U.S. 12 [100 L.Ed. 891, 76 S.Ct. 585, 55 A.L.R.2d 1055]; *In re Antazo, supra,* 3 Cal.3d 100; see generally Michelman, *The Supreme Court,* 1968 *Term, Foreword: On Protecting the Poor Through the Fourteenth Amendment* (1969) 83 Harv.L.Rev. 7, 19-33.)

Plaintiffs contend that the school financing system classifies on the basis of wealth. We find this proposition irrefutable. As we have already discussed, over half of all educational revenue is raised locally by levying taxes on real property in the individual school districts. Above the foundation program minimum ($355 per elementary student and $488 per high school student), the wealth of a school district, as measured by its assessed valuation, is the major determinant of educational expenditures. Although the amount of money raised locally is also a function of the rate at which the residents of a district are willing to tax themselves, as a practical matter districts with small tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts. (See fn. 15, *infra,* and accompanying text.) For example, Baldwin Park citizens, who paid a school tax of $5.48 per $100 of assessed valuation in 1968-1969, were able to spend less than half as much on education as Beverly Hills residents, who were taxed only $2.38 per $100. (Cal. Dept. of Ed., *op. cit. supra,* Table III-16, p. 43).

Defendants vigorously dispute the proposition that the financing scheme discriminates on the basis of wealth. Their first argument is essentially this: through *basic* aid, the statute distributes school funds equally to all pupils; through *equalization* aid, it distributes funds in a manner beneficial to the poor districts. However, state funds constitute only one part of the entire school fiscal system.[12] The foundation program partially alleviates the great disparities in local sources of revenue, but the system as a whole generates school revenue in proportion to the wealth of the individual district.[13]

Defendants also argue that neither assessed valuation per pupil nor expenditure per pupil is a reliable index

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[12]The other major portion is, of course, locally raised revenue; it is clear that such revenue is a part of the overall educational financing system. As we pointed out, *supra,* article IX, section 6 of the state Constitution specifically authorizes local districts to levy school taxes. Section 20701 et seq. of the Education Code details the mechanics of this process.

[13]Defendants ask us to follow *Briggs v. Kerrigan* (D.Mass. 1969) 307 F.Supp. 295, affd. (1st Cir. 1970) 431 F.2d 967, which held that the City of Boston did not violate the equal protection clause in failing to provide federally subsidized lunches at all of its schools. The court found that such lunches were offered only at schools which had kitchen and cooking facilities. As a result, in some cases the inexpensive meals were available to well-to-do children, but not to needy ones.

We do not find this decision relevant to the present action. Here, plaintiffs specifically allege that the allocation of school funds systematically provides greater educational opportunities to affluent children than are afforded to the poor. By contrast, in *Briggs* the court found no wealth-oriented discrimination: "There is no pattern such that schools with lunch programs predominate in areas of relative wealth and schools without the program in areas of economic deprivation." (*Id.* at p. 302.)

Furthermore, the nature of the right involved in the two cases is very different. The instant action concerns the right to an education, which we have determined to be fundamental. (See *infra.*) Availability of an inexpensive school lunch can hardly be considered of such constitutional significance.

of the wealth of a district or of its residents. The former figure is untrustworthy, they assert, because a district with a low total assessed valuation but a minuscule number of students will have a high per pupil tax base and thus appear "wealthy." Defendants imply that the proper index of a district's wealth is the toal assessed valuation of its property. We think defendants' contention misses the point. The only meaningful measure of a district's wealth in the present context is not the absolute value of its property, but the ratio of its resources to pupils, because it is the latter figure which determines how much the district can devote to educating each of its students.[14]

But, say defendants, the expenditure per child does not accurately reflect a district's wealth because that expenditure is partly determined by the district's tax rate. Thus, a district with a high total assessed valuation might levy a low school tax, and end up spending the same amount per pupil as a poorer district whose

[14]Gorman Elementary District in Los Angeles County, for example, has a total assessed valuation of $6,063,965, but only 41 students, yielding a per pupil tax base of $147,902. We find it significant that Gorman spent $1,378 per student on education in 1968-1969, even more than Beverly Hills. (Cal. Dept. of Ed., *op. cit. supra,* table IV-11, p. 90.)

We realize, of course, that a portion of the high per-pupil expenditure in a district like Gorman may be attributable to certain costs, like a principal's salary, which do not vary with the size of the school. On such expenses, small schools cannot achieve the economies of scale available to a larger district. To this extent, the high per-pupil spending in a small district may be a paper statistic, which is unrepresentative of significant differences in educational opportunities. On the other hand, certain economic "inefficiencies," such as a low pupil-teacher ratio, may have a positive educational impact. The extent to which high spending in such districts represents actual educational advantages is, of course, a matter of proof. (See fn. 16, *infra*. See generally *Hobson v. Hansen* (D.C. 1967) 269 F.Supp. 401, 437, affd. *sub nom. Smuck v. Hobson* (1969) 408 F.2d 175 [132 App.D.C. 372].)

residents opt to pay higher taxes. This argument is also meritless. Obviously, the richer destrict is favored when it can provide the same educational quality for its children with less tax effort. Furthermore, as a statistical matter, the poorer districts are financially unable to raise their taxes high enough to match the educational offerings of wealthier districts. (Legislative Analyst, Part V, *supra,* pp. 8-9.) Thus, affluent districts can have their cake and eat it too: they can provide a high quality education for their children while paying lower taxes.[15] Poor districts, by contrast, have no cake at all.

[15]"In some cases districts with low expenditure levels have correspondingly low tax rates. In many more cases, however, quite the opposite is true; districts with unusually low expenditures have unusually high tax rates owing to their limited tax base." (Legislative Analyst, Part V, *supra,* p. 8.) The following table demonstrates this relationship:

COMPARISON OF SELECTED TAX RATES AND EXPENDITURE LEVELS IN SELECTED COUNTIES
1968-1969

County	*ADA*	*Assessed Value per ADA*	*Tax Rate*	*Expenditure per ADA*
Alameda				
Emery Unified	586	$100,187	$2.57	$2,223
Newark Unified	8,638	6,048	5.65	616
Fresno				
Coalinga Unified	2,640	$ 33,244	$2.17	$ 963
Clovis Unified	8,144	6,480	4.28	565
Kern				
Rio Bravo Elementary	121	$136,271	$1.05	$1,545
Lamont Elementary	1,847	5,971	3.06	533
Los Angeles				
Beverly Hills Unified	5,542	$ 50,885	$2.38	$1,232
Baldwin Park Unified	13,108	3,706	5.48	577

(*Id.* at p. 9.)

This fact has received comment in reports by several California governmental units. "[S]ome school districts are able to provide a high-expenditure school program at rates of tax which are relatively low, while other districts must tax themselves heavily to finance a low-expenditure program. . . . [Par.]

(This footnote is continued on next page)

Finally, defendants suggest that the wealth of a school district does not necessarily reflect the wealth of the families who live there. The simple answer to this argument is that plaintiffs have alleged that there is a correlation between a district's per pupil assessed valuation and the wealth of its residents and we treat these material facts as admitted by the demurrers.

More basically, however, we reject defendants' underlying thesis that classification by wealth is constitutional so long as the wealth is that of the district, not the individual. We think that discrimination on the basis of district wealth is equally invalid. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the equality of a child's education dependent upon the location of private commercial and industrial estab-

One significant criterion of a public activity is that it seeks to provide equal treatment of equals. The present system of public education . . . in California fails to meet this criterion, both with respect to provision of services and with respect to the geographic distribution of the tax burden." (Cal. Senate Fact Finding Committee on Revenue and Taxation, *op. cit. supra,* p. 20.)

"California's present system of school support is based largely on a sharing between the state and school districts of the expenses of education. In this system of sharing, the school district has but one source of revenue—the property tax. Therefore, its ability to share depends upon its assessed valuation per pupil and its tax effort. The variations existing in local ability (assessed valuation per pupil) and tax effort (tax rate) present problems which deny equal educational opportunity and local tax equity." (Cal. State Dept. of Ed., Recommendations on Public School Support (1967) p. 69.) (Quoted in Horowitz & Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State* (1968) 15 U.C.L.A. L.Rev. 787, 806.)

lishments.[16] Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.

Defendants, assuming for the sake of argument that the financing system does classify by wealth, nevertheless claim that no constitutional infirmity is involved because the complaint contains no allegation of purposeful or intentional discrimination. (Cf. *Gomillion v. Lightfoot* (1960) 364 U.S. 339 [5 L.Ed.2d 110, 81 S.Ct. 125].) Thus, defendants contend, any unequal

[16]Defendants contend that different levels of education expenditure do not affect the quality of education. However, plaintiffs' complaint specifically alleges the contrary, and for purposes of testing the sufficiency of a complaint against a general demurrer, we must take its allegations to be true.

Although we recognize that there is considerable controversy among educators over the relative impact of educational spending and environmental influences on school achievement (compare Coleman et al., Equality of Educational Opportunity (U.S. Office of Ed. 1966) with Guthrie, Kleindorfer, Levin & Stout, Schools and Inequality (1971); see generally Coons, Clune & Sugarman, *supra,* 57 Cal.L.Rev. 305, 310-311, fn. 16), we note that the several courts which have considered contentions similar to defendants' have uniformly rejected them.

In *McInnis v. Shapiro* (N.D.Ill. 1968) 293 F.Supp. 327, aff'd. mem. *sub nom. McInnis v. Ogilvie* (1969) 394 U.S. 322 [22 L.Ed.2d 308, 89 S.Ct. 1197], heavily relied on by defendants, a three-judge federal court stated: "Presumably, students receiving a $1,000 education are better educated that [*sic*] those acquiring a $600 schooling." (Fn. omitted.) (*Id.* at p. 331.) In *Hargrave v. Kirk* (M.D.Fla. 1970) 313 F.Supp. 944, vacated on other grounds *sub nom. Askew v. Hargrave* (1971) 401 U.S. 476 [28 L.Ed.2d 196, 91 S.Ct. 856], the court declared: "Turning now to the defenses asserted, it may be that in the abstract 'the difference in dollars available does not necessarily produce a difference in the quality of education.' But this abstract statement must give way to proof to the contrary in this case." (*Id.* at p. 947.)

Spending differentials of up to $130 within district were characterized as "spectacular" in *Hobson v. Hansen, supra,* 269 F.Supp. 401. Responding to defendants' claim that the varying expenditures did not reflect actual educational benefits, the court replied: "To a great extent . . . defendants' own evidence verifies that the comparative per pupil figures do refer to actual educational advantages in the high-cost schools, especially with respect to the caliber of the teaching staff." (*Id.* at p. 438.)

treatment is only de facto, not de jure. Since the United States Supreme Court has not held de facto school segregation on the basis of race to be unconstitutional, so the argument goes, de facto classifications on the basis of wealth are presumptively valid.

We think that the whole structure of this argument must fall for want of a solid foundation in law and logic. First, none of the wealth classifications previously invalidated by the United States Supreme Court or this court has been the product of purposeful discrimination. Instead, these prior decisions have involved "unintentional" classifications whose impact simply fell more heavily on the poor.

For example, several cases have held that where important rights are at stake, the state has an affirmative obligation to relieve an indigent of the burden of his own poverty by supplying without charge certain goods or services for which others must pay. In *Griffin v. Illinois, supra,* 351 U.S. 12, the high court ruled that Illinois was required to provide a poor defendant with a free transcript on appeal.[17] *Douglas v. California, supra,* 372 U.S. 353 held that an indigent person has a right to court-appointed counsel on appeal.

Other cases dealing with the factor of wealth have held that a state may not impose on an indigent certain payments which, although neutral on their face, may

[17]Justice Harlan, dissenting in *Griffin,* declared: "Nor is this a case where the State's own action has prevented a defendant from appealing. [Citations.] All that Illinois has done is to fail to alleviate the consequences of differences in economic circumstances that exist wholly apart from any state action. [Par.] The Court thus holds that, at least in this area of criminal appeals, the Equal Protection Clause imposes on the States an affirmative duty to lift the handicaps flowing from differences in economic circumstances." (351 U.S. at p. 34 [100 L.Ed. at p. 907].)

have a discriminatory *effect.* In *Harper v. Virginia Bd. of Elections, supra,* 383 U.S. 663, the high court struck down a $1.50 poll tax, not because its *purpose* was to deter indigents from voting, but because its *result* might be such. (*Id.* at p. 666, fn. 3 [16 L.Ed. 2d at p. 172].) We held in *In re Antazo, supra,* 3 Cal.3d 100 that a poor defendant was denied equal protection of the law if he was imprisoned simply because he could not afford to pay a fine. (Accord, *Tate v. Short, supra,* 401 U.S. 395; *Williams v. Illinois, supra,* 399 U.S. 235;[18] see *Boddie v. Connecticut* (1971) 401 U.S. 371 [28 L.Ed.2d 113, 91 S.Ct. 780], discussed fn. 21 *infra.*) In summary, prior decisions have invalidated classifications based on wealth even in the absence of a discriminatory motivation.

We turn now to defendants' related contention that the instant case involves at most de facto discrimination.

[18]Numerous cases involving racial classifications have rejected the contention that purposeful discrimination is a prerequisite to establishing a violation of the equal protection clause. In *Hobson v. Hansen, supra,* 269 F.Supp. 401, Judge Skelly Wright stated: "Orthodox equal protection doctrine can be encapsulated in a single rule: government action which without justification imposes unequal burdens or awards unequal benefits is unconstitutional. The complaint that analytically no violation of equal protection vests unless the inequalities stem from a deliberately discriminatory plan is simply false. Whatever the law was once, it is a testament to our maturing concept of equality that, with the help of Supreme Court decisions in the last decade, we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme. [Par.] Theoretically, therefore, purely irrational inequalities even between two schools in a culturally homogenuous, uniformly white suburb would raise a real constitutional question." (Fns. omitted.) (*Id.* at p. 497.) (See also *Hawkins v. Town of Shaw, Mississippi* (5th Cir. 1971) 437 F.2d 1286; *Norwalk CORE v. Norwalk Redevelopment Agency* (2d Cir. 1968) 395 F.2d 920, 931.) No reason appears to impose a more stringent requirement where wealth discrimination is charged.

We disagree. Indeed, we find the case unusual in the extent to which governmental action *is* the cause of the wealth classifications. The school funding scheme is mandated in every detail by the California Constitution and statutes. Although private residential and commercial patterns may be partly responsible for the distribution of assessed valuation throughout the state, such patterns are shaped and hardened by zoning ordinances and other governmental land-use controls which promote economic exclusivity. (Cf. *San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 956 [92 Cal.Rptr. 309, 479 P.2d 669].) Governmental action drew the school district boundary lines, thus determining how much local wealth each district would contain. (Cal. Const., art. IX, § 14; Ed. Code, § 1601 et seq.; *Worthington S. Dist. v. Eureka S. Dist.* (1916) 173 Cal. 154, 156 [159 P. 437]; *Hughes v. Ewing* (1892) 93 Cal. 414, 417 [28 P. 1067]; *Mountain View Sch. Dist. v. City Council* (1959) 168 Cal.App.2d 89, 97 [335 P.2d 957].) Compared with *Griffin* and *Douglas*, for example, official activity has played a significant role in establishing the economic classifications challenged in this action.[19]

[19]One commentator has described state involvement in school financing inequalities as follows: "[The states] have determined that there will be public education, collectively financed out of general taxes; they have determined that the collective financing will not rest mainly on a statewide tax base, but will be largely decentralized to districts; they have composed the district boundaries, thereby determining wealth distribution among districts; in so doing, they have not only sorted education-consuming households into groups of widely varying average wealth, but they have sorted non-school-using taxpayers—households and others—quite unequally among districts; and they have made education compulsory." His conclusion is that "[s]tate involvement and responsibility are indisputable." (Michelman, *supra*, 83 Harv.L.Rev. 7, 50, 48.)

Finally, even assuming arguendo that defendants are correct in their contention that the instant discrimination based on wealth is merely de facto, and not de jure,[20] such discrimination cannot be justified by analogy to de facto *racial* segregation. Although the United States Supreme Court has not yet ruled on the constitutionality of de facto racial segregation, this court eight years ago held such segregation invalid, and declared that school boards should take affirmative steps to alleviate racial imbalance, however created. (*Jackson v. Padadena City School Dist.* (1963) 59 Cal.2d 876, 881 [31 Cal.Rptr. 606, 382 P.2d 878]; *San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d 937.) Consequently, any discrimination based on wealth can hardly be vindicated by reference to de facto racial segregation, which we have already condemned. In sum, we are of the view that the school financing system discriminates on the basis of the wealth of a district and its residents.

B

Education as a Fundamental Interest

But plaintiffs' equal protection attack on the fiscal system has an additional dimension. They assert that the system not only draws lines on the basis of wealth but that it "touches upon," indeed has a direct and significant impact upon, a "fundamental interest," namely education. It is urged that these two grounds,

[20]We recently pointed out the difficulty of categorizing *racial* segregation as either de facto or de jure. (*San Francisco United School Dist. v. Johnson, supra*, 3 Cal.3d 937, 956-957.) We think the same reasoning applies to classifications based on wealth. Consequently, we decline to attach an oversimplified label to the complex configuration of public and private decisions which has resulted in the present allocation of educational funds.

particularly in combination, establish a demonstrable denial of equal protection of the laws. To this phase of the argument we now turn our attention.

Until the present time wealth classifications have been invalidated only in conjunction with a limited number of fundamental interests—rights of defendants in criminal cases (*Griffin; Douglas; Williams; Tate; Antazo*) and voting rights (*Harper; Cipriano v. City of Houma* (1969) 395 U.S. 701 [23 L.Ed.2d 647, 89 S.Ct. 1897]; *Kramer v. Union School District* (1969) 395 U.S. 621 [23 L.Ed.2d 583, 89 S.Ct. 1886]; cf. *McDonald v. Board of Elections, supra,* 394 U.S. 802).[21] Plaintiffs' contention—that education is a fundamental interest which may not be conditioned on wealth—is not supported by any direct authority.[22]

[21]But in *Boddie v. Connecticut, supra,* 401 U.S. 371, the Supreme Court held that poverty cannot constitutionally bar an individual seeking a divorce from access to the *civil* courts. Using a due process, rather than an equal protection, rationale, the court ruled that an indigent could not be required to pay court fees and costs for service of process as a precondition to commencing a divorce action.

[22]In *Shapiro v. Thompson* (1969) 394 U.S. 618 [22 L.Ed. 2d 600, 89 S.Ct. 1322], in which the Supreme Court invalidated state minimum residence requirements for welfare benefits, the high court indicated, in dictum, that certain wealth discrimination in the area of education would be unconstitutional: "We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools." (*Id.* at p. 633 [22 L.Ed.2d at p. 614].) Although the high court referred to actual exclusion from school, rather than discrimination in expenditures for education, we think the constitutional principle is the same. (See fn. 24, and accompanying text.)

A federal Court of Appeals has also held that education is arguably a fundamental interest. In *Hargrave v. McKinney*

We, therefore, begin by examining the indispensable role which education plays in the modern industrial state. This role, we believe, has two significant aspects: first, education is a major determinant of an individual's chances for economic and social success in our competitive society; second, education is a unique influence on a child's development as a citizen and his participation in political and community life. "[T]he pivotal position of education to success in American society and its essential role in opening up to the individual the central experiences of our culture lend it an importance that is undeniable." (Note, *Development in the Law—Equal Protection* (1969) 82 Harv.L.Rev. 1065, 1129.) Thus, education is the lifeline of both the individual and society.

(5th Cir. 1969) 413 F.2d 320, the Fifth Circuit ruled that a three-judge district court must be convened to consider the constitutionality of a Florida statute which limited the local property tax rate which a county could levy in raising school revenue. Plaintiffs contended that the statute violated the equal protection clause because it allowed counties with a high per-pupil assessed valuation to raise much more local revenue than counties with smaller tax bases. The court stated: "The equal protection argument advanced by plaintiffs is the crux of the case. Noting that lines drawn on wealth are suspect [fn. omitted] and that we are here dealing with interests which may well be deemed fundamental, [fn. omitted] we cannot say that there is no reasonably arguable theory of equal protection which would support a decision in favor of the plaintiffs. [Citations.]" (*Id.* at p. 324.)

On remand, a three-judge court held the statute unconstitutional because there was no rational basis for the discriminatory effect which it had in poor counties. Having invalidated the statute under the traditional equal protection test, the court declined to consider plaintiffs' contention that education was a fundamental interest, requiring application of the "strict scrutiny" equal protection standard. (*Hargrave v. Kirk, supra,* 313 F.Supp. 944.) On appeal, the Supreme Court vacated the district court's decision on other grounds, but indicated that on remand the lower court should thoroughly explore the equal protection issue. (*Askew v. Hargrave* (1971) 401 U.S. 476 [28 L.Ed.2d 196, 91 S.Ct. 856].)

The fundamental importance of education has been recognized in other contexts by the United States Supreme Court and by this court. These decisions—while not *legally* controlling on the exact issue before us—are persuasive in their accurate factual description of the significance of learning.[23]

The classic expression of this position came in *Brown v. Board of Education* (1954) 347 U.S. 483 [98 L.Ed. 873, 74 S.Ct. 686, 38 A.L.R.2d 1180], which invalidated de jure segregation by race in public schools. The high court declared: "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." (*Id.* at p. 493 [98 L.Ed. at p. 880].)

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[23]Defendants contend that these cases are not of precedential value because they do not consider education in the context of wealth discrimination, but merely in the context of racial segregation or total exclusion from school. We recognize this distinction, but cannot agree with defendants' conclusion. Our quotation of these cases is not intended to suggest that they *control* the legal result which we reach here, but simply that they eloquently express the crucial importance of education.

The twin themes of the importance of education to the individual and to society have recurred in numerous decisions of this court. Most recently in *San Francisco Unified School Dist. v. Johnson, supra,* 3 Cal.3d 937, where we considered the validity of an anti-busing statute, we observed, "[u]nequal education, then, leads to unequal job opportunities, disparate income, and handicapped ability to participate in the social, cultural, and political activity of our society." (*Id.* at p. 950.) Similarly, in *Jackson v. Pasadena City School Dist., supra,* 59 Cal.2d 876, which raised a claim that school districts had been gerrymandered to avoid integration, this court said: "In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis." (*Id.* at p. 880.)

When children living in remote areas brought an action to compel local school authorities to furnish them bus transportation to class, we stated: "We indulge in no hyperbole to assert that society has a compelling interest in affording children an opportunity to attend school. This was evidenced more than three centuries ago, when Massachusetts provided the first public school system in 1647. [Citation.] And today an education has become the *sine qua non* of useful existence. . . . In light of the public interest in conserving the resource of young minds, we must unsympathetically examine an action of a public body which has the effect of depriving children of the opportunity to obtain an education." (Fn. omitted.) (*Manjares v. Newton* (1966) 64 Cal.2d 365, 375-376 [49 Cal.Rptr. 805, 411 P.2d 901].)

And long before these last mentioned cases, in *Piper v. Big Pine School Dist., supra,* 193 Cal. 664, where an Indian girl sought to attend state public schools, we declared: "[T]he common schools are doorways opening into chambers of science, art, and the learned professions, as well as into fields of industrial and commercial activities. Opportunities for securing employment are often more or less dependent upon the rating which a youth, as a pupil of our public constitutions, has received in his school work. These are rights and privileges that cannot be denied." (*Id.* at p. 673; see also *Ward v. Flood* (1874) 48 Cal. 36.) Although *Manjares* and *Piper* involved actual exclusion from the public schools, surely the right to an education today means more than access to a classroom.[24] (See *Horowitz & Neitring, supra,* 15 U.C.L.A. L.Rev. 787, 811.)

It is illuminating to compare in importance the right to an education with the rights of defendants in criminal cases and the right to vote—two "fundamental

[24]Cf. *Reynolds v. Sims* (1964) 377 U.S. 533, 562-563 [12 L.Ed.2d 506, 527-528, 84 S.Ct. 1362], where the Supreme Court asserted that the right to vote is impaired not only when a qualified individual is barred from voting, but also when the impact of his ballot is diminished by unequal electoral apportionment: "It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or ten times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. . . . Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical. . . . One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.' [Citation.]" (Fn. omitted.)

interests" which the Supreme Court has already protected against discrimination based on wealth. Although an individual's interest in his freedom is unique, we think that from a larger perspective, education may have far greater social significance than a free transcript or a court-appointed lawyer. "[E]ducation not only affects directly a vastly greater number of persons than the criminal law, but it affects them in ways which—to the state—have an enormous and much more varied significance. Aside from reducing the crime rate (the inverse relation is strong), education also supports each and every other value of a democratic society—participation, communication, and social mobility, to name but a few." (Fn. omitted.) (Coons, Clune & Sugarman, *supra,* 57 Cal.L.Rev. 305, 362-363.)

The analogy between education and voting is much more direct: both are crucial to participation in, and the functioning of, a democracy. Voting has been regarded as a fundamental right because it is "preservative of other basic civil and political rights. . . . (*Reynolds v. Sims, supra,* 377 U.S. 533, 562 [12 L.Ed.2d 506, 527]; see *Yick Wo v. Hopkins* (1886) 118 U.S. 356, 370 [30 L.Ed. 220, 226, 6 S.Ct. 1064].) The drafters of the California Constitution used this same rationale—indeed, almost identical language—in expressing the importance of education. Article IX, section 1 provides: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (See also *Piper v. Big Pine School Dist., supra,* 193 Cal. 664, 668.) At a minimum, education

makes more meaningful the casting of a ballot. More significantly, it is likely to provide the understanding of, and the interest in, public issues which are the spur to involvement in other civic and political activities.

The need for an educated populance assumes greater importance as the problems of our diverse society become increasingly complex. The United States Supreme Court has repeatedly recognized the role of public education as a unifying social force and the basic tool for shaping democratic values. The public school has been termed "the most powerful agency for promoting cohesion among a heterogeneous democratic people . . . at once the symbol of our democracy and the most pervasive means for promoting our common destiny." (*McCollum v. Board of Education* (1948) 333 U.S. 203, 216, 231 [92 L.Ed. 649, 661, 669, 68 S.Ct. 461, 2 A.L.R.2d 1338] Frankfurter, J., concurring).) In *Abington School Dist. v. Schempp* (1963) 374 U.S. 203 [10 L.Ed.2d 844, 83 S.Ct. 1560], it was said that "Americans regard public schools as a most vital civic institution for the preservation of a democratic system of government." (*Id.* at p. 230 [10 L.Ed.2d at p. 863] (Brennan, J., concurring).[25]

[25]The sensitive interplay between education and the cherished First Amendment right of free speech has also received recognition by the United States Supreme Court. In *Shelton v. Tucker* (1960) 364 U.S. 479 [5 L.Ed.2d 231, 81 S.Ct. 247], the court declared: "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." (*Id.* at p. 487 [5 L.Ed.2d at p. 236].) Similarly, the court observed in *Keyishian v. Board of Regents* (1967) 385 U.S. 589 [17 L.Ed.2d 629, 87 S.Ct. 675], "The classroom is peculiarly the 'market place of ideas.' The Nation's future depends upon leaders trained through wide exposure to [a] robust exchange of ideas. . . ." (*Id.* at p. 603 [17 L.Ed.2d at p. 640].) (See also *Tinker v. Des Moines School Dist.*

We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a "fundamental interest."[26]

First, education is essential in maintaining what several commentators have termed "free enterprise democracy"—that is, preserving an individual's opportunity to compete successfully in the economic marketplace, despite a disadvantaged background. Accordingly, the public schools of this state are the bright hope for entry of the poor and oppressed into the mainstream of American society.[27]

(1969) 393 U.S. 503, 512 [21 L.Ed.2d 731, 741, 89 S.Ct. 733]; *Epperson v. Arkansas* (1968) 393 U.S. 97 [21 L.Ed.2d 228, 89 S.Ct. 266].)

[26]The uniqueness of education was recently stressed by the United States Supreme Court in *Palmer v. Thompson* (1971) 403 U.S. 217 [29 L.Ed.2d 438, 91 S.Ct. 1940], where the court upheld the right of Jackson, Mississippi to close its municipal swimming pools rather than operate them on an integrated basis. Distinguishing an earlier Supreme Court decision which refused to permit the closing of schools to avoid desegregation, the court stated: "Of course that case did not involve swimming pools but rather public schools, an enterprise we have described as 'perhaps the most important function of state and local governments.' *Brown v. Board of Education, supra,* at 493." (*Id.* at p. 221 [29 L.Ed.2d at p. 442], fn. 6.) This theme was echoed in the concurring opinion of Justice Blackmun, who wrote: "The pools are not part of the city's educational system. They are a general municipal service of the nice-to-have but not essential variety, and they are a service, perhaps a luxury, not enjoyed by many communities." (*Id.* at p. 229 [29 L.Ed.2d at p. 447].)

[27]In this context, we find persuasive the following passage from *Hobson v. Hansen, supra,* 269 F.Supp. 401, which held, inter alia, that higher per-pupil expenditures in predominantly white schools than in black schools in the District of Columbia deprived "the District's Negro and poor public school children of their right to equal educational opportunity with the District's white and more affluent public school children." (*Id.* at p. 406.)

"If the situation were one involving racial imbalance but in some facility other than the public schools, or unequal educational opportunity but without any Negro or poverty aspects

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Second, education is universally relevant. "Not every person finds it necessary to call upon the fire department or even the police in an entire lifetime. Relatively few are on welfare. Every person, however, benefits from education . . . ." (Fn. omitted.) (Coons, Clune & Sugarman, *supra,* 57 Cal.L.Rev. at p. 388.)

Third, public education continues over a lengthy period of life—between 10 and 13 years. Few other government services have such sustained, intensive contact with the recipient.

Fourth, education is unmatched in the extent to which it molds the personality of the youth of society. While police and fire protection, garbage collection and street lights are essentially neutral in their effect on the individual psyche, public education actively attempts to shape a child's personal development in a manner chosen not by the child or his parents but by the state. (Coons, Clune & Sugarman, *supra,* 57 Cal.L.Rev. at p. 389.) "[T]he influence of the school is not confined to how well it can teach the disadvantaged child; it also has a significant role to play in shaping the student's emotional and psychological make-up." (*Hobson v. Hansen, supra,* 269 F. Supp. 401, 483.)

Finally, education is so important that the state has made it compulsory—not only in the requirement

(e.g., unequal schools all within an economically homogeneous white suburb), it might be pardonable to uphold the practice on a minimal showing of rational basis. But the fusion of these two elements in *de facto* segregation in public schools irresistibly calls for additional justification. What supports this call is . . . the degree to which the poor and the Negro must rely on the public schools in rescuing themselves from their depressed cultural and economic condition . . . ." (*Id.* at p. 508.) Although we realize that the instant case does not present the racial aspects present in *Hobson,* we find compelling that decision's assessment of the important social role of the public schools.

of attendance but also by assignment to a particular district and school. Although a child of wealthy parents has the opportunity to attend a private school, this freedom is seldom available to the indigent. In this context, it has been suggested that "a child of the poor assigned willy-nilly to an inferior state school takes on the complexion of a prisoner, complete with a minimum sentence of 12 years." (Coons, Clune & Sugarman, *supra,* 57 Cal.L.Rev. at p. 388.)

C

The Financing System Is Not Necessary To Accomplish a Compelling State Interest

We now reach the final step in the application of the "strict scrutiny" equal protection standard—the determination of whether the California school financing system, as presently structured, is necessary to achieve a compelling state interest.

The state interest which defendants advance in support of the current fiscal scheme is California's policy "to strengthen and encourage local responsibility for control of public education." (Ed. Code, § 17300.) We treat separately the two possible aspects of this goal: first, the granting to local districts of effective decision-making power over the administration of their schools; and second, the promotion of local fiscal control over the amount of money to be spent on education.

The individual district may well be in the best position to decide whom to hire, how to schedule its educational offerings, and a host of other matters which are either of significant local impact or of such a detailed nature as to require decentralized determination. But even assuming arguendo that local administra-

tive control may be a compelling state interest, the present financial system cannot be considered necessary to further this interest. No matter how the state decides to finance its system of public education, it can still leave this decision-making power in the hands of local districts.

The other asserted policy interest is that of allowing a local district to choose how much it wishes to spend on the education of its children. Defendants argue: "[I]f one district raises a lesser amount per pupil than another district, this is a matter of choice and preference of the individual district, and reflects the individual desire for lower taxes rather than an expanded educational program, or may reflect a greater interest within that district in such other services that are supported by local property taxes as, for example, police and fire protection or hospital services."

We need not decide whether such decentralized financial decision-making is a compelling state interest, since under the present financing system, such fiscal freewill is a cruel illusion for the poor school districts. We cannot agree that Baldwin Park residents care less about education than those in Beverly Hills solely because Baldwin Park spends less than $600 per child while Beverly Hills spends over $1,200. As defendants themselves recognize, perhaps the most accurate reflection of a community's commitment to education is the rate at which its citizens are willing to tax themselves to support their schools. Yet by that standard, Baldwin Park should be deemed far more devoted to learning than Beverly Hills, for Baldwin Park citizens levied a school tax of well over $5 per $100 of assessed valuation while residents of Beverly Hills paid only slightly more than $2.

In summary, so long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option.

It is convenient at this point to dispose of two final arguments advanced by defendants. They assert, first, that territorial uniformity in respect to the present financing system is not constitutionally required; and secondly, that if under an equal protection mandate relative wealth may not determine the quality of public education, the same rule must be applied to all tax-supported public services.

In support of their first argument, defendants cite *Salsburg v. Maryland* (1954) 346 U.S. 545 [98 L. Ed. 281, 74 S.Ct. 280] and *Board of Education v. Watson, supra,* 63 Cal.2d 829. We do not find these decisons apposite in the present context, for neither of them involved the basic constitutional interests here at issue.[28] We think that two lines of recent

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[28]*Salsburg* upheld a Maryland statute which allowed illegally seized evidence to be admitted in gambling prosecutions in one county, while barring use of such evidence elsewhere in the state. But when *Salsburg* was decided, the Fourth and Fourteenth Amendments had not yet been interpreted to prohibit the admission of unlawfully procured evidence in state trials. (*Mapp v. Ohio* (1961) 367 U.S. 643 [6 L.Ed.2d 1081, 81 S.Ct. 1684, 84 A.L.R.2d 933].) Consequently, the Supreme Court in *Salsburg* treated the Maryland statute as simply establishing a rule of evidence, which was purely procedural in

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decisions have indicated that where fundamental rights or suspect classifications are at stake, a state's general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause. (See Horowitz & Neitring, *supra,* 15 U.C.L.A. L.Rev. 787.)

The first group of precedents consists of the school closing cases, in which the Supreme Court has invalidated efforts to shut schools in one part of a state while schools in other areas continued to operate. In *Griffin v. School Board* (1964) 377 U.S. 218 [12 L.Ed.2d 256, 84 S.Ct. 1226] the court stated: "A state, of course, has a wide discretion in deciding whether laws shall operate statewide or shall operate only in certain counties, the legislature 'having in mind the needs and desires of each.' *Salsburg v. Maryland, supra,* 346 U.S., at 552. . . . But the record in the present case could not be clearer that Prince Edward's public schools were closed . . . for one reason, and one reason only: to ensure . . . that white and colored children in Prince Edward County would not, under any circumstances, go to the same school. Whatever nonracial grounds might support a State's allowing a county to abandon public schools, the object must be a constitutional one . . . ." (*Id.* at p. 231 [12 L.Ed.2d at p. 265].)

Similarly, *Hall v. St. Helena Parish School Board* (E.D.L.A. 1961) 197 F.Supp. 649, affd. mem. (1962)

nature. (346 U.S. at p. 550 [98 L.Ed. at p. 287]; see pp. 554-555 [98 L.Ed. at p. 290] (Douglas, J., dissenting).)

In *Watson* we rejected a constitutional attack on a statute which required special duties of the tax assessor in counties with a population in excess of four million, even though we recognized that only Los Angeles County would be affected by the legislation. In both cases, the courts simply applied the traditional equal protection test and sustained the provision after finding some rational basis for the geographic classification.

368 U.S. 515 [7 L.Ed.2d 521, 82 S.Ct. 529] held that a statute permitting a local district faced with integration to close its schools was constitutionally defective, not merely because of its racial consequences: "More generally, the Act is assailable because its application in one parish, while the state provides public schools elsewhere, would unfairly discriminate against the residents of that parish, irrespective of race. . . . [A]bsent a reasonable basis for so classifying, a state cannot close the public schools in one area while, at the same time, it maintains schools elsewhere with public funds." (Fn. omitted.) (*Id.* at pp. 651, 656.)

The *Hall* court specifically distinguished *Salsburg* stating: "The holding of Salsburg v. State of Maryland permitting the state to treat differently, for different localities, the rule against admissibility of illegally obtained evidence no longer obtains in view of Mapp v. Ohio, 367 U.S. 643 . . . . Accordingly, reliance on that decision for the proposition that there is no constitutional inhibition to geographic discrimination in the area of civil rights is misplaced. . . . [T]he Court [in *Salsburg*] emphasized that the matter was purely 'procedural' and 'local.' Here, the substantive classification is discriminatory . . . ." (*Id.* at pp. 658-659, fn. 29.)

In the second group of cases, dealing with apportionment, the high court has held that accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state's citizens. (Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined* (1968) 35 U.Chi.L.Rev. 583, 585; see also Wise, Rich Schools, Poor Schools: The Promise of Equal Educational Opportunity (1969) pp. 66-92.) Specifical-

ly rejecting attempts to justify unequal districting on the basis of various geographic factors, the court declared: "Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race [citation] or economic status, *Griffin v. Illinois,* 351 U.S. 12, *Douglas v. California,* 372 U.S. 353 . . . . The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote." (*Reynolds v. Sims, supra,* 377 U.S. 533, 566, 567 [12 L.Ed.2d 506, 529, 530].) If a voter's address may not determine the weight to which his ballot is entitled, surely it should not determine the quality of his child's education.[29]

Defendants' second argument boils down to this: if the equal protection clause commands that the relative wealth of school districts may not determine the quality

[29]Defendants also claim that permitting school districts to retain their locally raised property tax revenue does not violate equal protection because "[t]he power of a legislature in respect to the allocation and distribution of public funds is not limited by any requirement of uniformity or of equal protection of the laws." As an abstract proposition of law, this statement is clearly overbroad. For example, a state Legislature cannot make tuition grants from state funds to segregated private schools in order to avoid integration. (*Brown v. South Carolina State Board of Education* (D.S.C. 1968) 296 F.Supp. 199, affd. mem. (1968) 393 U.S. 222 [21 L.Ed.2d 391, 89 S.Ct. 449]; *Poindexter v. Louisiana Financial Assistance Commission* (E.D. La. 1967) 275 F.Supp. 833, affd. mem. (1968) 389 U.S. 571 [19 L.Ed.2d 780, 88 S.Ct. 693].) The cases cited by defendants are inapplicable in the present context. Neither *Hess v. Mullaney* (9th Cir. 1954) 213 F.2d 635, cert. den. *sub nom. Hess v. Dewey* (1954) 348 U.S. 836 [99 L.Ed. 659, 75 S.Ct. 50], nor *Gen. Amer. Tank Car Corp. v. Day* (1926) 270 U.S. 367 [70 L.Ed. 635, 46 S.Ct. 234] involved a claim to a fundamental constitutional interest, such as education. (See Coons, Clune & Sugarman, *supra,* 57 Cal.L.Rev. at p. 371, fn. 184.)

of public education, it must be deemed to direct the same command to all governmental entities in respect to all tax-supported public services;[30] and such a principle would spell the destruction of local government. We unhesitatingly reject this argument. We cannot share defendants' unreasoned apprehensions of such dire consequences from our holding today. Although we intimate no views on other governmental services,[31] we are satisfied that, as we have explained, its uniqueness among public activities clearly demonstrates that

[30]In support of this contention, defendants cite the following quotation from *MacMillan Co. v. Clarke* (1920) 184 Cal. 491, 500 [194 P. 1030, 17 A.L.R. 288], in which we upheld the constitutionality of a statute providing free textbooks to high school pupils: "[T]he free school system . . . is not primarily a service to the individual pupils, but to the community, just as fire and police protection, public libraries, hospitals, playgrounds, and the numerous other public service utilities which are provided by taxation, and minister to individual needs, are for the benefit of the general public." Whatever the case as to the other services, we think that in this era of high geographic mobility, the "general public" benefited by education is not merely the particular community where the schools are located, but the entire state.

[31]We note, however, that the Court of Appeals for the Fifth Circuit has recently held that the equal protection clause forbids a town to discriminate racially in the provision of municipal services. In *Hawkins v. Town of Shaw, Mississippi, supra,* 437 F.2d 1286, the court held that the town of Shaw, Mississippi had an affirmative duty to equalize such services as street paving and lighting, sanitary sewers, surface water drainage, water mains and fire hydrants. The decision applied the "strict scrutiny" *equal protection standard and reversed* the decision of the district court which, relying on the traditional test, had found no constitutional infirmity.

Although racial discrimination was the basis of the decision, the court intimated that wealth discrimination in the provision of city services might also be invalid: "Appellants also alleged the discriminatory provision of municipal services based on wealth. This claim was dropped on appeal. It is interesting to note, however, that the Supreme Court has stated that wealth as well as race renders a classification highly suspect and thus demanding of a more exacting judicial scrutiny. [Citation.]" (*Id.* at p. 1287, fn. 1.)

education must respond to the command of the equal protection clause.

We, therefore, arrive at these conclusions. The California public school financing system, as presented to us by plaintiffs' complaint supplemented by matters judicially noticed, since it deals intimately with education, obviously touches upon a fundamental interest. For the reasons we have explained in detail, this system conditions the full entitlement to such interest on wealth, classifies its recipients on the basis of their collective affluence and makes the quality of a child's education depend upon the resources of his school district and ultimately upon the pocketbook of his parents. We find that such financing system as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite "strict scrutiny," it denies to the plaintiffs and others similarly situated the equal protection of the laws.[32] If the allegations of the complaint are sustained, the financial system must fall and the statutes comprising it must be found unconstitutional.

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[32]The United States Commission on Civil Rights has stated that "[i]t may well be that the substantial fiscal and tangible inequalities which at present exist between city and suburban school districts . . . contravene the 14th amendment's equal protection guarantee" Relying on the quotation from *Brown v. Board of Education, supra,*—" 'where a State provides education, it must be provided to all on equal terms' "—the commission concluded that this passage "would appear to render at least those substantial disparities which are readily identifiable —such as disparities in fiscal support, average per pupil expenditure, and average pupil-teacher ratios—unconstitutional." The commission also cited the reapportionment decisions and *Griffin v. Illinois, supra,* concluding, "Here, as in *Griffin,* the State may be under no obligation to provide the service, but having undertaken to provide it, the State must insure that the benefit is received by the poor as well as the rich in substantially equal measure." (U.S. Commission on Civil Rights, *op. cit. supra,* p. 261, fn. 282.)

IV

Defendants' final contention is that the applicability of the equal protection clause to school financing has already been resolved adversely to plaintiffs' claims by the Supreme Court's summary affirmances in *McInnis v. Shapiro, supra,* 293 F.Supp. 327, affd. mem. *sub nom. McInnis v. Ogilvie* (1969) 394 U.S. 322 [22 L.Ed.2d 308, 89 S.Ct. 1197], and *Burruss v. Wilkerson* (W.D.Va. 1969) 310 F.Supp. 572, affd. mem. (1970) 397 U.S. 44 [26 L.Ed.2d 37, 90 S.Ct. 812]. The trial court in the instant action cited *McInnis* in sustaining defendants' demurrers.

The plaintiffs in *McInnis* challenged the Illinois school financing system, which is similar to California's, as a violation of the equal protection and due process clauses of the Fourteenth Amendment because of the wide variations among districts in school expenditures per pupil. They contended that "*only* a financing system which apportions public funds according to the educational needs of the students satisfies the Fourteenth Amendment." (Fn. omitted.) (293 F.Supp. at p. 331.)

A three-judge federal district court concluded that the complaint stated no cause of action "for two principal reasons: (1) the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' *educational needs,* and (2) the lack of judicially manageable standards makes this controversy nonjusticiable." (Fn. omitted.) (293 F.Supp. at p. 329.) (Italics added.) The court additionally rejected the applicability of the strict scrutiny equal protection standard and ruled that the Illinois financing scheme was rational because it was "designed to allow individual localities to determine their own

tax burden according to the importance which they place upon public schools." (*Id.* at p. 333.) The United States Supreme Court affirmed per curiam with the following order: "The motion to affirm is granted and the judgment is affirmed." (394 U.S. 322 [22 L.Ed.2d 308, 89 S.Ct. 1197].) No cases were cited in the high court's order; there was no oral argument.[33]

Defendants argue that the high court's summary affirmance forecloses our independent examination of the issues involved. We disagree.

Since *McInnis* reached the Supreme Court by way of appeal from a three-judge federal court, the high court's jurisdiction was not discretionary. (28 U.S.C. § 1253 (1964).) In these circumstances, defendants are correct in stating that a summary affirmance is formally a decision on the merits. However, the significance of such summary dispositions is often unclear, especially where, as in *McInnis*, the court cites no cases as authority and guidance. One commentator has stated, "It has often been observed that the dismissal of an appeal, technically an adjudication on the merits, is in practice often the substantial equivalent of a denial of certiorari."[34] (D. Currie, *The Three-Judge*

[33]The plaintiffs in *Burruss* attacked the constitutionality of the Virginia school financing scheme. The decision of the district court, which dismissed their complaint for failure to state a claim, was cursory, containing little legal reasoning and relying on *McInnis v. Shapiro* for precedent. Consequently, the parties to the instant action have centered their discussion on *McInnis*, and we follow suit.

[34]Although the Supreme Court affirmed the *McInnis* decision, rather than dismissing the appeal, Currie's statement is probably entirely applicable anyway. In upholding decisions of lower courts on appeal, the Supreme Court "will affirm an appeal from a federal court, but will dismiss an appeal from a state court 'for want of a substantial federal question.' Only history would seem to justify this distinction. . . ." (Stern & Gressman, Supreme Court Practice (4th ed. 1969) at p. 233.)

District Court in Constitutional Litigation (1964) 32 U.Chi.L.Rev. 1, 74, fn. 365.) Frankfurter and Landis had suggested earlier that the pressure of the court's docket and differences of opinion among the judges operate "to subject the obligatory jurisdiction of the court to discretionary considerations not unlike those governing *certiorari*." (Frankfurter & Landis, *The Business of the Supreme Court at October Term, 1929* (1930) 44 Harv.L.Rev. 1, 14.) Between 60 and 84 percent of appeals in recent years have been summarily handled by the Supreme Court without opinion. (Stern & Gressman, *op. cit. supra*, at p. 194.)[35]

At any rate, the contentions of the plaintiffs here are significantly different from those in *McInnis*. The instant complaint employs a familiar standard which has guided decisions of both the United States and California Supreme Courts: discrimination on the basis of wealth is an inherently suspect classification which may be justified only on the basis of a compelling state interest. (See cases, cited, part III, *supra*.) By contrast, the *McInnis* plaintiffs repeatedly emphasized

[35]Summary disposition of a case by the Supreme Court need not prevent the court from later holding a full hearing on the same issue. The constitutionality of compulsory school flag salutes is a case in point. For three successive years—in *Leoles v. Landers* (1937) 302 U.S. 656 [82 L.Ed. 507, 58 S.Ct. 364]; *Hering v. State Board of Education* (1938) 303 U.S. 624 [82 L.Ed. 1087, 58 S.Ct. 752]; and *Johnson v. Deerfield* (1939) 306 U.S. 621 [83 L.Ed. 1027, 59 S.Ct. 791]—the Supreme Court summarily upheld lower court decisions which ruled such requirements constitutional. The very next year the high court granted certiorari in *Minersville District v. Gobitis* (1940) 310 U.S. 586 [84 L.Ed. 1375, 60 S.Ct. 1010, 127 A.L.R. 1493]; thereby providing for oral argument and a full briefing of the issue. Although in *Gobitis* it adhered to its earlier per curiam decisions, three years later the court reversed its position and ruled such requirements invalid. (*Board of Education v. Barnette* (1943) 319 U.S. 624 [87 L.Ed. 1628, 63 S.Ct. 1178, 147 A.L.R. 674].)

"educational needs" as the proper standard for measuring school financing against the equal protection clause. The district court found this a "nebulous concept" (293 F.Supp. 327, 329, n. 4)—so nebulous as to render the issue nonjusticiable for lack of "discoverable and manageable standards.' "[36] (*Id.* at p. 335.) In fact, the nonjusticiability of the "educational needs" standard was the basis for the *McInnis* holding; the district court's additional treatment of the substantive issues was purely dictum. In this context, a Supreme Court affirmance can hardly be considered dispositive of the significant and complex constitutional questions presented here.[37]

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[36]The plaintiffs in *Burruss* also relied on an "educational needs" standard in their attack on the Virginia school financing scheme, causing the district court to remark: "However, the courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of these students throughout the State." (310 F.Supp. at p. 574.)

[37]In a comprehensive article on equal protection and school financing, three commentators, have stated: "The meaning of *McInnis v. Shapiro* is ambiguous; but the case hardly seems another *Plessy v. Ferguson.* Probably but a temporary setback, it was the predictable consequence of an effort to force the court to precipitous and decisive action upon a novel and complex issue for which neither it nor the parties were ready. . . . [T]he plaintiffs' virtual absence of intelligible theory left the district court bewildered. Given the pace and character of the litigation, confusion of court and parties may have been inevitable, foreordaining the summary disposition of the appeal. The Supreme Court could not have been eager to consider an issue of this magnitude on such a record. Concededly its per curiam affirmance is formally a decision on the merits, but it need not imply the Court's permanent withdrawal from the field. It is probably most significant as an admonition to the protagonists to clarify the options before again invoking the Court's aid." (Coons, Clune & Sugarman, *supra,* 57 Cal.L. Rev. at pp. 308-309.)

The Supreme Court's willingness to order a full hearing by a federal district court on the issues raised in *Hargrave v. Kirk* (see *Askew v. Hargrave, supra,* 401 U.S. 476), indicates to us that it does not consider the applicability of the equal protection clause to educational financing foreclosed by its decisions in *McInnis* and *Burruss.*

Assuming, as we must in light of the demurrers, the truth of the material allegations of the first stated cause of action, and considering in conjunction therewith the various matters which we have judicially noticed, we are satisfied that plaintiff children have alleged facts showing that the public school financing system denies them equal protection of the laws because it produces substantial disparities among school districts in the amount of revenue available for education.

The second stated cause of action by plaintiff parents by incorporating the first cause has, of course, sufficiently set forth the constitutionally defective financing scheme. Additionally, the parents allege that they are citizens and residents of Los Angeles County; that they are owners of real property assessed by the county; that some of defendants are county officials; and that as a direct result of the financing system they are required to pay taxes at a higher rate than taxpayers in many other districts in order to secure for their children the same or lesser educational opportunities. Plaintiff parents join with plaintiff children in the prayer of the complaint that the system be declared unconstitutional and that defendants be required to restructure the present financial system so as to eliminate its unconstitutional aspects. Such prayed for relief is strictly injunctive and seeks to prevent public officers of a county from acting under an allegedly void law. Plaintiff parents then clearly have stated a cause of action since "[i]f the . . . law is unconstitutional, then county officials may be enjoined from spending their time

carrying out its provisions . . . ." (*Blair v. Pitchess* (1971) *ante*, p. 258, 269 [96 Cal.Rptr. 42, 486 P.2d 1242]; Code Civ. Proc., § 526a.)[38]

Because the third cause of action incorporates by reference the allegations of the first and second causes and simply seeks declaratory relief, it obviously set forth facts sufficient to constitute a cause of action.

In sum, we find the allegations of plaintiffs' complaint legally sufficient and we return the cause to the trial court for further proceedings. We emphasize, that our decision is not a final judgment on the merits. We deem it appropriate to point out for the benefit of the trial court on remand (see Code Civ. Proc., § 43) that if, after further proceedings, that court should enter final judgment determining that the existing system of public school financing is unconstitutional and invalidating said system in whole or in part, it may properly provide for the enforcement of the judgment in such a way as to permit an orderly transition from an unconstitutional to a constitutional system of school financing. As in the cases of school desegregation (see *Brown v. Board of Education* (1955) 349 U.S. 294 [99 L.Ed. 1083, 75 S.Ct. 753]) and legislative reapportionment (see *Silver v. Brown* (1965) 63 Cal.2d 270, 281 [46 Cal.Rptr. 308, 405 P.2d 132]), a determination that an existing plan of governmental operation denies equal protection does not necessarily require invalidation of past acts undertaken pursuant to that plan or an immediate implementation of a

[38]Although plaintiff parents bring this action against state, as well as county officials, it has been held that state officers too may be sued under section 526a. (*Blair v. Pitchess, ante*, p. 258, at p. 267; *California State Employees' Assn. v. Williams* (1970) 7 Cal.App.3d 390, 395 [86 Cal.Rptr. 305]; *Ahlgren v. Carr* (1962) 209 Cal.App.2d 248, 252-254 [25 Cal.Rptr. 887].)

constitutionally valid substitute. Obviously, any judgment invalidating the existing system of public school financing should make clear that the existing system is to remain operable until an appropriate new system, which is not violative of equal protection of the laws, can be put into effect.

By our holding today we further the cherished idea of American education that in a democratic society free public schools shall make available to all children equally the abundant gifts of learning. This was the credo of Horace Mann, which has been the heritage and the inspiration of this country. "I believe," he wrote, "in the existence of a great, immortal immutable principle of natural law, or natural ethics,—a principle antecedent to all human institutions, and incapable of being abrogated by any ordinance of man . . . which proves the *absolute right* to an education of every human being that comes into the world, and which, of course, proves the correlative duty of every government to see that the means of that education are provided for all. . . ." (Original italics.) (Old South Leaflets V, No. 109 (1846) pp. 177-180 (Tenth Annual Report to Mass. State Bd. of Ed.), quoted in Readings in American Education (1963 Lucio ed.) p. 336.)

The judgment is reversed and the cause remanded to the trial court with directions to overrule the demurrers and to allow defendants a reasonable time within which to answer.

Wright, C. J., Peters, J., Tobriner, J., Mosk, J., and Burke, J., concurred.

McCOMB, J.—I dissent. I would affirm the judgment for the reasons expressed by Mr. Justice Dunn in the opinion prepared by him for the Court of Appeal in *Serrano v. Priest* (Cal.App.) 89 Cal.Rptr. 345.

Respondents' petition for a rehearing was denied October 21, 1971, and the opinion was modified to read as printed above. McComb, J., was of the opinion that the petition should be granted.

APPENDIX D.

Opinion of Court of Appeal.
Reported in 89 Cal.Rptr. 345,
Vacated by California Supreme Court.

John Serrano, Jr., etc., et al., Plaintiffs and Appellants, v. Ivy Baker Priest, etc., et al., Defendants and Respondents. Civ. 35017.

Court of Appeal, Second District, Division 4. Sept. 1, 1970.

Rehearing Denied Sept. 25, 1970.

Hearing Granted Nov. 10, 1970.

[Decision thereby vacated.]

Class actions brought by elementary and high school pupils and parents "to secure equality of educational opportunity." The Superior Court, Los Angeles County, Richard L. Wells, J., sustained state and county defendants' demurrers. Robert W. Kenny, J., granted defendants' motion for dismissal after plaintiffs' failure to amend. Plaintiffs appealed. The Court of Appeal, Dunn, J., held that complaint alleging that, under system of financing of public schools in state, money spent per pupil varied from one district to another according to wealth of pupil's parents and district in which pupil resided, not according to his educational needs, did not state cause of action under equal protection clause of Fourteenth Amendment. The Court further held that complaint alleging that financing produced separate and distinct school systems, each providing educational program whose quality depended upon relative wealth of residents of district did not state cause of action under section of State Constitution providing that legislature shall provide for system of

common schools by which free schools shall be kept up and supported in each district.

Order affirmed.

David A. Binder, Los Angeles, Michael H. Shapiro, William T. Rintala, Los Angeles, Harold W. Horowitz and Sidney M. Wolinsky, San Francisco, for plaintiffs and appellants.

Thomas C. Lynch, Atty. Gen., Sanford N. Gruskin, Deputy Atty. Gen., John D. Maharg, County Counsel, James W. Briggs, Asst. County Counsel, and Elaine M. Grillo, Deputy County Counsel, Donovan M. Main, Deputy County Counsel for defendants and respondents.

DUNN, Associate Justice.

A number of elementary and high school pupils attending public schools in Los Angeles County commenced a class action "to secure equality of educational opportunity." The class purportedly represented consists of all children attending public schools in California except children in that unnamed, unknown school district which "affords the greatest educational opportunity." In a second cause of action, several parents pursue a class action, as taxpayers, seeking the same relief. The defendants are state and county officers responsible for collection and disbursement of state funds and county taxes for the support of public schools.[1]

Plaintiffs alleged that the system of financing public schools in California violates the equal protection clause of the Fourteenth Amendment to the federal Constitution and similar provisions of the California Constitu-

[1]Defendants are: The State Treasurer; the State Superintendent of Public Instruction; the State Controller; the tax collector and treasurer of Los Angeles County; the superintendent of schools of Los Angeles County; and some "Does".

tion,[2] contending there are wide variations among school districts in the amount of money spent per pupil, resulting in inferior educational opportunities for the children in certain districts. Plaintiffs sought the following relief: (1) a declaration that the system of financing public schools violates the equal protection clause of the Fourteenth Amendment and the "fundamental law and Constitution of California"; (2) an order directing defendants to reallocate school funds and otherwise to restructure the financing system in such a manner as not to violate the federal and state Constitutions; and (3) an adjudication that the court retain jurisdiction in the action in order to restructure the system should defendants and the Legislature fail to do so within a reasonable time.

Both the state and the county defendants filed general demurrers, which were sustained (by Judge Richard L. Wells). Following plaintiffs' failure to amend within the time allowed, defendants moved for dismissal. The motion was granted (by Judge Robert W. Kenny) and the action dismissed as to all named defendants, pursuant to Code Civ.Proc. § 581, subd. 3.[3] Plaintiffs appeal from the judgment of dismissal,[4] contending that the complaint states a cause of action under the

[2]Cal.Const. Art. I, § 11 and § 21.

[3]Code Civ.Proc. § 581: "An action may be dismissed in the following cases: * * * 3. By the court * * * when, after a demurrer to the complaint has been sustained with leave to amend, the plaintiffs fails to amend it within the time allowed by the court, and either party moves for such dismissal."

[4]There is no document designated "judgment of dismissal." However, the order of dismissal, signed by the court and filed in the action, constitutes an appealable judgment. Code Civ. Proc. §§ 581d and 904.1; Adohr Milk Farms, Inc. v. Love, 255 Cal.App.2d 366, 369, 63 Cal.Rptr. 123 (1967).

equal protection clause of the Fourteenth Amendment and under state Constitution Art. IX, § 5, the latter requiring the Legislature to provide for a system of free common schools.

Since the complaint challenges the validity of the entire statutory system of financing public schools, we must consider the operation of that system before we turn to a discussion of plaintiffs' contentions.

Article IX, sections 5 and 6, of the state Constitution provides for the creation and financing of a system of free public schools. Pursuant thereto, the Legislature has established "the foundation program," which may be defined as the minimum amount of money necessary for the support of public schools. (Ed.Code § 17300.) The State Superintendent of Public Instruction computes a foundation program for each school district, whether elementary, high school or junior college. (Ed.Code § 17651.) The amount computed depends upon such variable factors as the type of district, the number of pupils in average daily attendance, and the number of teachers employed full time. (Ed.Code § 17654.5 et seq.) The state (from the State School Fund) and the school districts (from the local school tax revenues) contribute toward the foundation program. (Ed. Code § 17300.)

The contribution of the school districts is known as "district aid". This is the amount which a tax, levied on each $100 of 100 percent of the assessed valuation in a district, would produce if the tax were $1 for an elementary school district, 80¢ for a high school district, and 25¢ for a junior college district. (Ed.Code § 17702.)[5]

[5]The rates used to determine district aid are less than the maximum school tax rates set forth in Ed.Code § 20751.

The state's contribution toward the foundation program takes two forms: (1) "Basic state aid." This is required by Cal. Const. Art. IX, § 6, and consists of a grant to each district in the amount of $125 per unit of average daily attendance for each fiscal year, with a minimum of $2,400 per district (Ed. Code §§ 17751, 17801 and 17851). (2) "State equalization aid." To each district in which the combined amount of district aid and basic state aid is less than the foundation program for that district, equalization aid is granted in an amount necessary to make up the difference. (Ed.Code § 17901 et seq.)[6] Thus, each school district receives the full amount of its foundation program if it levies taxes at a rate sufficient to enable it to contribute district aid toward that program.[7]

Pursuant to the mandate of Cal.Const. Art. IX, § 6, the Legislature has authorized the governing body of each county to levy and collect such school district taxes (not in excess of prescribed maximum rates) as are necessary to produce in each fiscal year the amounts of money requested by the school districts and approved by the county superintendent of schools. (Ed.Code §§ 20601-20603; § 20701 et seq.) The budget submitted by a school district may exceed the amount of the foundation program computed for that

[6]In addition to basic state aid and equalization aid, the state grants "supplemental aid" as follows: A maximum of $125 per pupil in average daily attendance to each elementary district with $12,500 or less in assessed valuation per unit of average daily attendance; and a maximum of $72 per pupil in average daily attendance to each high school district with $24,000 or less in assessed valuation per unit of average daily attendance. (Ed.Code § 17920 et seq.)

[7]Plaintiffs do not allege that there is any school district which levies taxes at rates below those necessary to qualify for equalization aid.

district. There are wide variations among the school districts in tax rates per $100 of assessed valuation, and in assessed property valuations. School tax revenues are retained by the taxing authority and expended at the local level. (Ed.Code §§ 20856, 20857, 20921 and 20951 et seq.)

Because of all of these factors, there is a considerable variation in the amount of money spent per pupil from one school district to another despite state contributions of basic aid, equalization aid and supplemental aid.

I. *Does The Complaint State A Cause Of Action Under The Equal Protection Clause Of The Fourteenth Amendment?*

Plaintiffs alleged that the system of financing public schools in California violates the equal protection clause because the amount of money spent per pupil varies from one district to another according to the wealth of a pupil's parents and the district in which he resides, not according to his educational needs. In short, they alleged that under the equal protection clause the amount of money per pupil may vary only on the basis of the respective educational needs of pupils.

In McInnis v. Shapiro, 293 F.Supp. 327 (3-judge court, N.D.Ill., 1968),[8] summarily affirmed sub nom. McInnis v. Ogilvie, 394 U.S. 322, 89 S.Ct. 1197, 22 L.Ed.2d 308 (1969) "The motion to affirm is granted and the judgment is affirmed", it was held that similar allegations did not state a cause of action under the Fourteenth Amendment. Under attack in

[8]In its minute order sustaining the general demurrers in our case, the court cited the *McInnis* case.

that case was the Illinois system of financing public schools, which is essentially identical to the California system. Plaintiffs, public school pupils, sought a declaration that the system violated the equal protection clause because it permitted wide variations in expenditures per pupil from district to district, thereby providing some students with a good education and depriving others having equal or greater educational needs. A three-judge district court dismissed the suit for failure to state a cause of action on the ground, *inter alia,* that the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' educational needs.

The court determined if *McInnis* that the school financing legislation did not violate the equal protection clause, because variations in the amount of money spent per pupil are reasonably related to the legislative policy of delegating authority to school districts, including the right to determine their own tax burden according to the importance which they place upon public schools.[9] In this regard, the court observed (293 F.Supp. page 333): "The state legislature's decision to

[9]A like policy is expressed by the California Legislature in Ed.Code § 17300: "* * * The system of public school support should be designed to strengthen and encourage local responsibility for control of public education. * * * Effective local control requires that all local administrative units contribute to the support of school budgets in proportion to their respective abilities, and that all have such flexibility in their taxing programs as will readily permit of progress in the improvement of the educational program. Effective local control requires a local taxing power, and a local tax base which is not unduly restricted or overburdened."

Thus, if one district raises a lesser amount per pupil than another district, this may reflect an individual wish for lower taxes rather than an expanded educational program, or indicate a greater interest in other services supported by local property taxes, such as hospital care or police or fire protection.

allow local choice and experimentation is reasonable, especially since the common school fund assures a minimum of $400 per student. Plaintiffs stress the inequality inherent in having school funds partially determined by a pupil's place of residence, but this is an inevitable consequence of decentralization. The students also object to having revenues related to property values, apparently without realizing that the equalization grant effectively tempers variations in assessed value by using a hypothetical calculation. Furthermore, the flat grants and state and federal categorical aid reduce the school's dependence on local taxes. While alternative methods of distributing school monies might be superior to existing legislation, 'To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require rough accommodations—illogical, it may be, and unscientific. * * * Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void under the Fourteenth Amendment.' "

The court concluded by stating (page 336): "Unequal educational expenditures per student, based upon the variable property values and tax rates of local school districts, do not amount to an invidious discrimination. Moreover, the statutes which permit these unequal expenditures on a district to district basis are neither arbitrary nor unreasonable. There is no Constitutional requirement that public school expenditures be made only on the basis of pupils' educational needs without regard to the financial strength of local school districts. Nor does the Constitution establish

the rigid guideline of equal dollar expenditures for each student."

Plaintiffs argue that *McInnis* is not persuasive because the court erroneously used the "reasonable relationship" test in determining that the system of school financing did not violate the equal protection clause. They contend that we must employ the more stringent "close scrutiny" test, because of fundamental right is in issue, *viz.*, the right to an education. In support of this contention plaintiffs cite decisions of the United States Supreme Court which hold that regardless of the objectives sought to be accomplished, a state may not abridge such constitutionally guaranteed rights as interstate travel[10] and voting.[11] The rationale of such decisions is inapplicable here.

Plaintiffs next contend that *McInnis* is not controlling because it did not consider the question whether the school financing system is constitutionally invalid in that it effects distribution of school funds in proportion to the wealth of school district residents. This contention is without merit. *McInnis* holds that "[u]nequal educational expenditures per student, based upon the variable property values and tax rates of local school districts, do not amount to an invidious discrimination." Clearly, the comparative wealth of school district residents enters into the financing system only insofar as it is reflected in property values and tax rates. Neither is a reliable index.[12]

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[10]Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

[11]Carrington v. Rash, 380 U.S. 89, 85 S.Ct. 775, 13 L.Ed. 2d 675 (1965).

[12]Thus, using 1967-1968 statistics (Annual Report of Financial Transactions Concerning School Districts of California, pp. 10-11, State Controller) for some districts mentioned by plain-

(This footnote is continued on next page)

Plaintiffs further contend that *McInnis* is not binding upon us because the summary affirmance by the United States Supreme Court is not a decision on the merits. We are bound by decisions of the Supreme Court on questions depending upon the construction of the United States Constitution (Moon v. Martin, 185 Cal. 361, 366, 197 P. 77 [1921]), and a summary affirmance by the Supreme Court is a decision on the merits which has precedential value (Stern and Gressman Supreme Court Practice [4th ed., 1969], §§ 4.28 and 5.16, pp. 197, 230-231). Even if we are not bound by the *McInnis* holding, it is certainly of persuasive character and entitled to great weight. People v. Bradley, 1 Cal.3d 80, 86, 81 Cal.Rptr. 457, 460 P.2d 129 (1969); People v. Willard, 238 Cal.App.2d 292, 305, 47 Cal.Rptr. 734 (1965). And irrespective of its effect, as legally binding or not, its reasoning and logic are unquestioned. The case was followed in Burrus v. Wilkerson, 310 F.Supp. 572 (3-judge court, W.D.Va., 1969), affirmed 397 U.S. 44, 90 S.Ct. 812, 25 L.Ed.2d 37 (1970), wherein a similar attack was made on the school system of Virginia.

II. *Does The Complaint State A Cause of Action Under Article IX, Section 5, Of The California Constitution*?

California Constitution Article IX, § 5, provides: "The Legislature shall provide for a system of common

tiffs, the tax bases per pupil in average daily attendance were: (1) Gorman Sch. Dist.—$158,619, (2) Willowbrook Sch. Dist. —$3,051, (3) Compton City Sch. Dist.—$7,777 and (4) Hudson Sch. Dist.—$5,820. However, the total assessed valuation of these districts was: (1) Gorman—$5,710,280, (2) Willowbrook—$10,810,890, (3) Compton—$138,651,500 and (4) Hudson—$119,414,610 and the total number of pupils in average daily attendance was: (1) Gorman—36, (2) Willowbrook—3,543, (3) Compton—17,825 and (4) Hudson—20,519.

schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."[18]

Plaintiffs contend that, whereas this provision requires one school system throughout the state, the public school financing method produces "separate and distinct school systems, each providing an educational program whose quality depends upon the relative wealth of the residents of the district."

The word "system" implies a unity of purpose and an entirety of operation, and "the direction to the legislature to provide 'a' system of common schools means *one* system which shall be applicable to all the common schools within the state." Kennedy v. Miller, 97 Cal. 429, 432, 32 P. 558, 559 (1893).

However, the constitution does not require that the school system be uniform as to quality of education or money spent per pupil. Rather, the system must be uniform in terms of courses of study offered and educational progression: "Both the Constitution and statutes of the state provide for a uniform system and course of study as adopted and provided by the authority of the state. Under this uniform system pupils advance progressively from one grade to another and, upon the record made, are admitted from one school into another pursuant to a uniform system of educational progression. * * * Each grade forms a working unit in a uniform, comprehensive plan of education.

[18]Plaintiffs did not allege specifically that the system of financing public schools violates Cal.Const. Art. IX, § 5. However, they did allege that such system "fails to meet minimum requirements of * * * the fundamental law and Constitution of the State of California."

Each grade is preparatory to a higher grade and, indeed, affords an entrance into schools of technology, agriculture, normal schools, and the University of California." Piper v. Big Pine School Dist., 193 Cal. 664, 669, 670, 226 P. 926, 928, 930 (1924).

The allegations of a complaint just be regarded as true as against a demurrer, and the judgment of dismissal must be reversed if the complaint, on any theory, states grounds for relief, either legal or equitable. Loope v. Greyhound Lines, Inc., 114 Cal.App.2d 611, 615, 250 P.2d 651 (1952); Roberts v. Wachter, 104 Cal.App.2d 281, 287-288, 231 P.2d 540 (1951); Kauffman v. Bobo & Wood, 99 Cal.App.2d 322, 324, 221 P.2d 750 (1950). However, even when the allegations here are given their fullest force they do not state a cause of action under either the equal protection clause of the Fourteenth Amendment or Cal.Const. Art. IX, § 5.

The judgment (order of dismissal) is affirmed.

FILES, P. J., and JEFFERSON, J., concur.

APPENDIX E.

Opinion of the Trial Court After Trial on Remand by "Serrano I". (Unreported).

Superior Court of the State of California, for the County of Los Angeles.

John Serrano, Jr., et al., Plaintiffs, vs. Ivy Baker Priest, Treasurer of the State of California, et al., Defendants. No. 938,254.

MEMORANDUM OPINION
RE INTENDED DECISION

Plaintiffs in this action are certain Los Angeles County public school children and their parents. Plaintiffs have brought an action seeking declaratory and injunctive relief against certain State and County officials charged with administering the financing of California's public school system.

Defendants in this case are Ivy Baker Priest, Treasurer of the State of California, Wilson C. Riles, Superintendent of Public Instruction of the State of California, Houston I. Flournoy, Controller of the State of California, Harold J. Ostly, Tax Collector and Treasurer of the County of Los Angeles, and Richard M. Clowes Superintendent of Schools of Los Angeles County. Certain school districts of the County of Los Angeles were permitted to intervene and become defendants. The intervening school-district defendants are Burbank Unified School District, El Segundo Unified School District, Glendale Unified School District, Beverly Hills Unified School District, Long Beach Unified School District, South Bay Union High School District, and San Marino Unified School District.

The California Federation of Teachers, AFL-CIO, was also permitted to intervene in the action and become a plaintiff in intervention.

The complaint sets forth three causes of action. The first cause of action is by the plaintiff-children who allege that the California public school financing system fails to meet the requirements of the equal protection clause of the Fourteenth Amendment of the United States Constitution and of comparable provisions of the California Constitution.

In the second cause of action, the plaintiff-parents, after incorporating by reference all the allegations of the first cause of action, allege that as a direct result of the California public school financing system, they, as property taxpayers, are required to pay taxes at higher tax rates than taxpayers in many other school districts of the State in order to obtain for their children the same or lesser educational opportunities that are afforded to children in such other school districts.

In the third cause of action, all plaintiffs incorporate by reference all of the allegations of the first two causes of action and then allege that they are entitled to declaratory relief because of the existence of a controversy between the parties as to the validity and constitutionality of the California public school financing system under the Fourteenth Amendment of the United States Constitution and under comparable provisions of the California Constitution.

Plaintiffs seek three categories of relief: (1) a declaration that the California public school financing system is unconstitutional; (2) an order directing defendants to reallocate school funds so as to remedy this invalidity; and (3) an adjudication that the trial court shall

retain jurisdiction of the action so that the court may restructure the California public school financing system if defendants and the California State Legislature fail to do so within a reasonable time.

This action came on for trial before this court after a remand of the case by the California Surpeme Court in its opinion in *Serrano v. Priest* (1971) 5 Cal.3d 584, 96 Cal.Rptr. 601. This action was before the California Surpeme Court in 1971 because of a prior trial court's ruling which sustained defendants' demurrer to plaintiffs' complaint. In the 1971 opinion, the California Supreme Court held that plaintiffs' complaint stated a good cause of action for unconstitutionality of the California public school financing system as tested by defendants' demurrers to plaintiffs' complaint. For the purpose of ruling on the demurrers, the court had to consider as true all of the allegations of plaintiffs' complaint. Accordingly, the case was remanded to the trial court for trial on the merits to determine from a presentation of evidence the truth or falsity of the allegations set forth in plaintiffs' complaint.

The trial of this case commenced on December 26, 1972. During the progress of the trial, several events occurred which changed the case substantially from the circumstances that existed at the time the case was presented to the California Supreme Court in 1971. The first event occurred in December of 1972 when The California Legislature enacted legislation that will be referred to herein as SB 90. This legislation was approved by the Governor on December 18, 1972 and became effective on December 26, 1972, the starting date of the trial of this case at bench. Although section 1 of SB 90 states that it may be cited as

"the Property Tax Relief Act of 1972," it is conceded that much of this legislation made changes in the California public school financing system. SB 90 was followed in 1973 by a second significant event—the enactment by the Legislature and approval by the Governor of legislation described as a trailer bill to SB 90 and which will be referred to herein after as AB 1267. In view of the enactment of SB 90 and AB 1267, it was agreed by all parties that the California system of financing public schools, which system's validity is the subject of the case at bench, includes not only all pertinent provisions of the California Constitution, statutes and administrative codes and all pertinent provisions of federal statutes and regulations, but includes all modifications, amendments and additions to the California statutes and administrative codes resulting from the California Legislature's enactment of SB 90 and AB 1267.

A third significant event which changes the posture of this *Serrano* case as it was presented to the California Supreme Court in 1971, was the decision by the United States Supreme Court entitled *San Antonio Independent School District vs. Rodriguez* (1973) 411 U.S. 1, 93 S.Ct. 1278.

We turn next to a description of the California public school financing system as it existed at the time of the *Serrano* decision by the California Surpeme Court in 1971. The major source of revenue came from local property taxes that were levied by the governing body of each county, or city and county, as school district taxes. The levy of real estate taxes for public school purposes obtains its authorization from Article IX, section 6, of the California Constitution. Section 6 sets forth that the Legislature shall provide for the

levying annually by the governing body of each county, and city and county, of school district taxes at rates not in excess of the maximum rates fixed by the Legislature. The amount to be raised by such levy is that amount which will produce in each fiscal year such revenue for the school district as the governing body thereof shall determine is required for the support of all schools and functions of the school district which is authorized or required by law.

In addition to real estate taxes as a source of revenue for school districts, the State has made a contribution from funds secured through other taxes, such as funds secured from the State income taxes and sales taxes. Also, school districts have received funds from the federal government and miscellaneous sources. In 1968-1969, educational revenues for the school districts were obtained as follows: local property taxes, 55.7%; State funds, 35.5%; federal funds, 6.1%; and miscellaneous sources, 2.7%.

Both before and after the passage of SB 90 and AB 1267 the State's contribution to the various school districts is known as the "foundation program." Its basic principle is that of a minimum guaranteed dollar amount per pupil to each school district in the State. At the time of the *Serrano* decision, the foundation program provided that each school district would be guaranteed annually from State and local tax funds the sum of $355 for each elementary school pupil and the sum of $488 for each high school pupil. This State contribution guaranty to school districts was divided into two segments. One segment is known as "basic aid," which is a flat grant to each school district of $125 per pupil each year, regardless of the relative wealth of a school district or its ability

to raise school funds from the imposition of local property taxes. The requirement of basic state aid comes from the provisions of Article IX, section 6, paragraph 4, of the California Constitution.

The second segment of State aid to public schools is known as "equalization aid." The equalization aid was computed in the following manner: The State Superintendent of Public Instruction would first compute mathematically the amount of local property tax revenue that would be raised if the school district were to levy a property tax at a computational rate of $1.00 for each $100 of assessed value for an elementary school district, and $.80 for each $100 of assessed value for a high school district. To the amount so obtained on a per-pupil basis would be added the basic aid grant of $125. If the sum of these two amounts was less than the foundation program minimum for that district—$355 for an elementary district and $488 for a high school district—the State would contribute from its general funds to the school district the difference to insure the foundation program minimum for each pupil.

Under this system, the computational tax rate of $1.00 for each $100 of assessed value for elementary school districts and $.80 for each $100 of assessed value in a high school district would produce an amount per pupil that was in excess of the foundation program minimums in those school districts with relatively high assessed values. Such districts would not qualify for equalization aid. But under the State's basic aid segment of the State's contribution to public school financing, each school district in the State received the sum of $125 per pupil even though the revenues actually raised by the imposition of property taxes far exceeded

the foundation program minimums set forth above. Thus, each school district received from the State's general fund the amount of $125 per student regardless of the relative wealth of such school district in terms of its assessed valuation of taxable property.

The pre-SB 90 and AB 1267 financing system also provided for a category of State aid known as "supplemental aid." This category was available to the extremely poor school districts which were willing to make an extra local tax effort to increase their revenues. Thus, special grants were available for the extremely small schools and special grants were made available to encourage unification of elementary and secondary school districts into unified districts and also for special classes for handicapped children.

Above the foundation program levels under the pre-SB 90 and AB 1267 system, school districts were free to raise whatever additional funds they desired by imposing local property taxes. At the time of the *Serrano* court's decision, practically all school districts in the State raised and spent revenues per pupil that were substantially above the foundation program levels. Thus, in 1970-71, the state-wide average expenditures per pupil were approximately $733 for an elementary district and $973 for a high school district. These levels of expenditures are considerably above the foundation program support levels during the same year of $355 per pupil for an elementary district and $488 per pupil for a high school district.

The pre-SB 90 and AB 1267 actua levels of school district expenditures per pupil above the State's foundation support program were made possible because of the legislatively authorized tax rates to be determined

by a school district's voters in excess of the statutory ceilings fixed by the State Legislature at the low minimum rates of $.90 for an elementary district, $.75 for a high school district, and $1.65 for a unified district. In addition to the voted override property tax rates accomplished by the votes of taxpayers under the pre-SB 90 and AB 1267 system, school boards were authorized to impose permissible override taxes for special purposes without securing voter approval.

The pre-SB 90 and AB 1267 California public school financing system may be described, therefore, as a foundation program consisting of the following elements: (1) basic aid; (2) equalization aid; (3) supplemental aid; (4) permissive tax overrides; and (5) voted tax overrides. In essence, the system derived its revenues from the combination of local property taxes and contributions by the State. As indicated by the 1968-1969 figures set forth, *supra,* prior to the passage of SB 90 and AB 1267, the major source of revenue for financing the public schools of California came from local property taxes that were levied by the governing body of each county, or city and county, as school district taxes.

On the date of the *Serrano* decision, this method of financing the California elementary and secondary schools produced results which are not in dispute. One result was that wide differentials existed between school districts in the revenues available to individual school districts and in the level of educational expenditures. The State's basic aid contribution constituted about one-half of the State's educational funds going to the school districts, and the payment to each school district of the State of basic aid actually widened

the gap in educational revenues and expenditures between the rich and the poor school districts because of the fact that basic aid distribution was on a uniform per pupil basis to all districts, irrespective of a district's wealth in terms of the assessed valuation of its property.

Using the assumption that the allegations of plaintiffs' complaint were true, the *Serrano* court held that this foundation system of financing California's public elementary and secondary schools was invalid. The principal element of invalidity was the *Serrano* court's conclusion that the major determinant of educational expenditures was the wealth of a school district as measured by the assessed value of its real property. Since the bulk of school revenues was derived from local taxation of real property, the assessed valuation of such property governed the amount of revenue that could be raised for school purposes.

Thus, a school district whose real property had a low assessed valuation was unable to raise adequate funds for school purposes irrespective of high tax rates which the votes were willing to vote and impose on themselves. It was the factor of wide disparities in assessed valuations of real property between the school districts of the State which caused equally wide differentials in tax rates between school districts. Under the pre-SB 90 and AB 1267 financing system, there existed wide disparities in tax rates and wide disparities in revenue and school expenditures per pupil between the school districts of the State.

One obvious result of this school financing system with its wide variations among school districts in assessed valuations of real property per pupil was that a school district with a relatively high assessed valuation

per pupil was able to generate relatively high revenues per pupil with a relatively low tax rate, while a school district with a relatively low assessed valuation of real property per pupil could only generate relatively low revenues with even a considerably higher tax rate. Thus, in 1970-71, Beverly Hills School District in Los Angeles County had an assessed valuation of real property per elementary pupil of $91,494, while Baldwin Park School District in Los Angeles County had an assessed valuation of real property per pupil of only $5,396; McKittrick Elementary School District in Kern County had an assessed valuation of real property per pupil of $1,053,436, while Wheatland Elementary School District in Yuba County had an assessed valuation of real property per pupil of only $1,938; and Alpine County Unified School District had an assessed valuation of real property per pupil of $335,513, while Travis Unified School District in Solano County had an assessed valuation of real property per pupil of only $8,863.

The effect of such disparities in assessed valuations of property upon school revenues and expenditures is obvious. For example, in 1970-71, $1.00 of tax per $100 of assessed value of property at the elementary level raised $914.94 in the Beverly Hills School District but only $53.96 in the Baldwin Park School District.

The *Serrano* court described the pre-SB 90 and AB 1267 relationship between assessed valuations of property and revenues and expenditures in the following language: "Although equalization aid and supplemental aid temper the disparities which result from the vast variations in real property assessed valuation, wide differentials remain in the revenue available to individual districts and, consequently, in the level of educational expenditures. . . . Thus, the state grants are inadequate to offset the inequalities inherent in a financing system based on widely varying local tax bases." (*Serrano, supra,* 5 Cal.3d 584, 594, 96 Cal.Rptr. 601.)

The *Serrano* court concluded that the pre-SB 90 and AB 1267 California public school financing system was invalid and unconstitutional as a denial to the plaintiffs of the equal protection of the laws. The equal-protection-of-the-laws denial resulted from the fact that the financing system produced substantial disparities among school districts in the amount of revenue available for education and made the quality of a child's education depend upon the resources of his school district and ultimately upon the pocketbook of his parents. As indicated *supra,* the underlying assumption of the *Serrano* court's holding is that the material allegations of plaintiffs' complaint are true. The direction to this trial court is found in the statement: "If the allegations of the complaint are sustained, the financial system must fall and the statutes comprising it must be found unconstitutional." (*Serrano, supra,* 5 Cal.3d 584, 615, 96 Cal.Rptr. 601.)

The *Serrano* court said that it found irrefutable the proposition that the school financing system classified its recipients on the basis of wealth—that "the wealth of a school district, as measured by its assessed valuation. is the major determinant of educational expenditures." (*Serrano, supra,* 5 Cal.3d 584, 598, 96 Cal.Rptr. 601.)

In describing the effect of the tax rate on the school revenues raised, the court stated: "Although the amount of money raised locally is also a function of the rate at which the residents of a district are willing to

tax themselves, as a practical matter districts with small tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that the more affluent reap with minimal tax efforts." (*Serrano, supra,* 5 Cal.3d 584, 598, 96 Cal.Rptr. 601.) As an example, the *Serrano* opinion sets forth that the citizens of the Baldwin Park School District paid a school tax of $5.48 per $100 of assessed valuation in 1968-69 but still could only spend less than half as much on education as the residents of the Beverly Hills School District who were taxed at the rate of only $2.38 per $100 of assessed valuation.

Defendants contended in their argument before the *Serrano* court in 1971 that the expenditure per child does not accurately reflect the school district's wealth because that expenditure is partly determined by the school district's tax rate. Thus, defendants pointed out that a district with a high total assessed valuation might levy a low school tax and end up spending the same amount per pupil as a poorer district whose resident voters decided to pay higher taxes. To this argument, the *Serrano* court replied: "This argument is also meritless. Obviously, the richer district is favored when it can provide the same educational quality for its children with less tax effort. Furthermore, as a statistical matter, the poorer districts are financially unable to raise their taxes high enough to match the educational offerings of wealthier districts. (Citation omitted.) Thus, affluent districts can have their cake and eat it too: they can provide a high quality education for their children while paying lower taxes. Poor districts, by contrast, have no cake at all." (*Serrano, supra,* 5 Cal.3d 584, 599, 96 Cal.Rptr. 601.)

SB 90 and AB 1267 continue the foundation program approach for the financing of elementary and secondary public school education. The financing program under SB 90 and AB 1267 starts with the fiscal year 1973-74 and is made up essentially of the following elements:

1. The basic aid in the amount of $125 per pupil to each school district in the State is continued.

2. The equalization aid is changed as follows: For the fiscal year 1973-74, for the elementary school district, the amount is increased from $355 to $765 per pupil and for the high school districts, the amount per pupil is increased from $488 to $950.

For the fiscal year 1974-75, the foundation aid amounts are increased by a flat figure of $60 per pupil except that, if the percentage increase statewide of the assessed valuation of real property per pupil for grades kindergarten through 12 is less than 7%, the $60 addition is reduced proportionately but with a minimum increase required of $50.

For the fiscal year 1975-76, the foundation aid amounts per pupil are increased by the flat figure of $63 as a maximum with the same provision that if the percentage increase of the statewide ratio of assessed valuation of real property per pupil is less than 7%, there is to be the proportionate reduction from $63 to a minimum of $53.

For the fiscal year 1976-77, the elementary and high school foundation programs are increased by the sum of $66 per pupil, but again with the provision that if the percentage increase of the statewide ratio of assessed valuation of real property per

pupil is less than 7%, the $66 figure is to be reduced proportionately but to no less than $56.

For the fiscal year 1977-78, the elementary and high school foundation progrms are to be increased by 6% of a unified foundation program as determined pursuant to Education Code section 17301(e), unless the Legislature determines otherwise. Education Code section 17301(e) sets forth a special formula for determining the foundation program for the fiscal year 1977-78 and thereafter if the Legislature fails to enact new provisions about increases or decreases in the foundation programs.

The monetary increases provided in the foundation programs for each year following the first year—1973-74, were designed to eliminate what was known as the "slippage" factor in the formula for the foundation program under the pre-SB 90 and AB 1267 State financing system. Prior to SB 90 and AB 1267, the foundation dollar amounts remained constant from year to year. Each year, however, there has been an increase in the assessed valuation of real property per pupil in the school districts throughout the State. The formula of applying the computational tax rate to a district's assessed valuation of real property per pupil produced a yearly higher amount to be obtained from local property taxes which left a lesser amount to be contributed by the State to the school district to reach the foundational amount which remained constant. For example, in 1968-69, the State's share of educational funds to school districts amounted to 35.5%, while the local property taxes produced 55.7%. In the fiscal year 1972-73, however, because of the yearly slippage factor, the State's share of school support to school

districts fell to between 30% and 33%, while the school districts' share from real property taxes had climbed to over 60%.

3. A third fundamental part of the school financing system under SB 90 and AB 1267 is the change made in the computation tax rates. The elementary rate was raised from $.90 to $2.23, the high school rate was raised from $.75 to $1.64, and the unified computational tax rate was raised from $1.65 to $3.87.

4. A fourth important element of the school financing system under SB 90 and AB 1267 is the requirement that the following minimum tax rates must be imposed by school districts to be entitled to equalization aid: an elementary district, $1.00 per $100 of assessed value per pupil; a high school district, $.80 per $100 of assessed value per pupil; and a unified district, $1.80 per $100 of assessed value per pupil.

5. A fifth essential element of the financing system under SB 90 and AB 1267 involves the creation of revenue limits which thereby affect maximum expenditure limits for every school district. Districts have maximum revenue amounts fixed and taxes may be imposed only at rates to produce such maximum revenue amounts. The amount which a school district may expend per pupil is thus automatically controlled by the limitation on the revenue which a district may raise through real property taxation. The revenue limits are imposed for the fiscal year 1973-74 through the appliction of a formula that requires the school district to start with the year 1972-73 as the base year for expenditures or revenues raised per pupil. A district is then permitted to levy taxes at the rate which will increase its expenditures per pupil over the 1972-73

sum by an amount which, in effect, will be no more than equal to a yearly inflation factor. For the year 1973-74, three alternatives are provided:

A. A district may add to the 1972-73 revenue base per pupil a lfat $70 inflation allowance or a percentage thereof, or a district below the foundation program may instead move toward the foundation program at a maximum of 116%; or

B. A district may add the unused portion of a voted override tax rate to the revenue limit computational tax rates, and use a $65 inflation allowance per pupil, or a percentage thereof, or a district below the foundation program may instead move toward the foundation program at a maximum of 115%; or

C. A district may add to the 1972-73 revenue base the unrestricted balances used to balance income to expenditures in 1972-73, but not to exceed 3% of the total expenditures in certain expenditure classifications of the State's general fund for 1972-73, and use the $65 inflation allowance per pupil, or a percentage thereof, or a district below the foundation program may instead move toward the foundation program at a maximum of 115%.

A major question before this trial court is to determine the application of the *Serrano* court's opinion in 1971 to the California public school financing system as amended by the passage of SB 90 and AB 1267.

The first question to be considered is the effect on the *Serrano* court's decision of the *Rodriguez* decision by the United States Supreme Court in March, 1973. In *San Antonio Independent School District v. Rodriguez* (1973) 411 U.S. 1, 93 S.Ct. 1278, the Supreme Court of the United States held that the

Texas system of financing its public schools did not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Texas system was similar to the pre-SB 90 and AB 1267 California system in that the public schools were financed through a combination of local property taxes and contributions by the state, with resulting significant disparities in assessed valuations of real property and in educational expenditures between school districts.

The question of the effect of *Rodriguez* on *Serrano* involves, in part, a determination of whether the California Supreme Court's decision in *Serrano* was based solely upon the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, or upon the dual grounds of the United States Constitution and provisions of the California Constitution that are similar to the equal-protection-of-the-laws provisions of the Fourteenth Amendment to the United States Constitution. The *Serrano* decision recognized that the chief contention underlying plaintiffs' complaint was that the California public school financing scheme violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. There is little doubt that the major force of the California court's decision constituted an analysis of the requirements of the Equal Protection Clause of the Fourteenth Amendment and the decisions of the United State Supreme Court interpreting that clause.

If the California Supreme Court's decision in *Serrano* was predicated on both the United States and California Constitutions, the *Rodriguez* opinion could have no conclusive effect on the *Serrano* decision. If, however, *Serrano* is to be interpreted as being based *solely*

on the Equal Protection Clause of the Fourteenth Amendment, or which amounts to the same thing—an interpretation of the California Constitution acting under what the State court conceived to be the compulsion of the federal Constitution—*Rodriguez* would then be dispositive of the *Serrano* case, and this court would be required to hold that the California system of financing public schools is valid and constitutional.

However, if the *Serrano* decision is based on both federal and California constitutional grounds, *Rodriguez* can have no conclusive effect upon the decision since the State constitutional grounds would be sufficiently supportive of the decision, even though the federal constitutional ground of the decision would now be governed by the *Rodriguez* holding that such a financing system does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The question before this trial court, therefore, is to decide whether the *Serrano* decision was predicated on both the federal and California constitutional provisions. It is clear that the California Supreme Court did not base its *Serrano* decision solely upon any provisions of the California Constitution.

The key to deciding what the California Supreme Court intended in *Serrano* comes from footnote 11 of the decision. Footnote 11 is as follows: "The complaint also alleges that the financing system violates article I, sections 11 and 21, of the California Constitution. Section 11 provides: 'All laws of a general nature shall have a uniform operation.' Section 21 states: 'No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed

by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms shall not be granted to all citizens.' We have construed these provisions as "substantially the equivalent' of the equal protection clause of the Fourteenth Amendment to the federal Constitution. (*Dept. of Mental Hygiene v. Kirchner* (1965) 62 Cal.2d 586, 588 [43 Cal.Rptr. 329, 400 P.2d 321].) *Consequently, our analysis of plaintiffs' federal equal protection contentions is also applicable to their claim under these state constitutional provisions.*" (*Serrano, supra,* 5 Cal.3d 584, 596, fn. 11, 96 Cal.Rptr. 60.) (*Emphasis added.*)

It appears from footnote 11 to the *Serrano* opinion that the question of whether the California Supreme Court intended its holding to be based upon California constitutional grounds as well as on federal constitutional grounds depends primarily upon an interpretation of the last sentence of footnote 11. In stating that the court's "analysis of plaintiffs' federal equal protection contention is also applicable to their claim under these state constitutional provisions," does the court intend thereby to mean that its interpretation of California constitutional provisions comes from an independent interpretation of such provisions, or that it comes from a compulsion of an interpretation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution? A perusal of the entire opinion of the Supreme Court in *Serrano* does not furnish a definitive answer to the question raised by the court's language in footnote 11.

Ths trial court cannot find in any of the language of the opinion a compelling indication of what the court had in mind by the language used in footnote

11. However, we find guidance, we believe, in an analysis of cases such as *Dept. of Mental Hygiene v. Kirchner* (1964) 60 Cal.2d 716, 36 Cal.Rptr. 488. In the *Kirchner* case, the California Supreme Court declared unconstitutional provisions of the Welfare & Institutions Code which imposed upon relatives of a mentally ill person liability for his care, support and maintenance in a State institution of which he is an inmate. The court held that such statute constituted an invalid class discrimination in violation of the constitutional guaranty of equal protection of the laws. This case went to the Supreme Court of the United States which found that an examination of the California Supreme Court's opinion did not indicate whether the State court relied on the State Constitution alone, the United States Constitution alone, or on both; that unless the California judgment rested solely on the Fourteenth Amendment or on the State Constitution but under the compulsion of the United States Constitution, the United States Supreme Court would have no jurisdiction. The case was remanded to the California Supreme Court for determination of the ground of its decision.

The matter came before the California Supreme Court in 1965 in *Dept. of Mental Hygiene v. Kirchner,* 62 Cal.2d 586, 43 Cal.Rptr. 329. Pursuant to the mandate of the United States Supreme Court, the California Supreme Court issued a memorandum opinion to clarify the ground of its ruling. In clarifying its prior opinion, the court stated that it was its understanding that the Fourteenth Amendment to the federal Constitution and sections 11 and 21 of Article I of the California Constitution "provide generally equivalent but independent protections in their respective jurisdictions." (*Kirchner, supra,* 62 Cal.2d 586, 588,

43 Cal.Rptr. 329.) In addition, the court's memorandum opinion recited that these provisions of the California Constitution have been generally thought in California to be "*substantially the equivalent* of the equal protection clause of the Fourteenth Amendment to the United Staes Constitution." (*Kirchner, supra,* 62 Cal.2d 586, 588.) (Emphasis added.)

The *Kirchner* court then proceeded to state that the view it reached as to the invalidity of the legislation considered in *Kirchner* should be reached under both the federal and California Constitutions; that, in any event, the court was independently constrained to the same result by application of sections 11 and 21 of Article I of the California Constitution, and that such a result was reached by construction and application of California law, regardless of whether there was or was not compulsion to the same end by the United States Constitution. The court concluded that "inasmuch as we did not act solely by compulsion of the Fourteenth Amendment, either directly or in construing or in applying state law, we reiterate our former decision as filed January 30, 1964, reported at 60 Cal.2d 716 [36 Cal.Rptr. 488, 388 P.2d 720]." (*Kirchner, supra,* 62 Cal.2d 586, 588, 93 Cal.Rptr. 329.)

In *People v. Krivda* (1971) 5 Cal.3d 357, 96 Cal. Rptr. 62, marijuana was found by the police in defendants' trash barrels. The California Supreme Court held that this was the result of an illegal search and seizure. On certiorari to the United States Supreme Court in *California v. Krivda* (1972) 409 U.S. 33, 35, 93 S.Ct. 32, the Court declared that it was "unable to determine whether the California Supreme Court based its holding upon the Fourth and Fourteenth

Amendments to the Constitution of the United States or upon the equivalent provision of the California Constitution, or both." The California judgment was vacated for further consideration by the California Supreme Court.

On remand, in *People v. Krivda* (1973) 8 Cal.3d 623, 624, 105 Cal.Rptr. 521, the California Supreme Court stated that it had reexamined its opinion in the case. It then certified that "we relied upon both the Fourth Amendment to the United States Constitution and article I, section 19, of the California Constitution, and that accordingly the latter provision furnished an independent ground to support the result we reached in that opinion."

An examination of the California Supreme Court's opinion in the first *Krivda* case reveals that the court referred to the Fourth Amendment of the United States Constitution but made no direct reference to Article I, section 19, of the California Constitution. But in *California v. Krivda, supra,* the United States Supreme Court took notice of the fact that the California Supreme Court, in reaching its decision, had cited excerpts from its earlier decision of *People v. Edwards* (1969) 71 Cal.2d 1096, 80 Cal.Rptr. 633. The *Edwards* case invalidated a search as being violative of both the Fourth Amendment to the United States Constitution and Article I, section 19, of the California Constitution. It was because of the reliance upon the *Edwards* case in *Krivda* that the United States Supreme Court said it could not tell whether the California Supreme Court was relying upon a federal constitutional ground or a California constitutional ground, or upon both.

In another recent case, *Rios v. Cozens* (1973) 9 Cal.3d 454, 107 Cal.Rptr. 784, the question arose whether the California Supreme Court had based its prior holding found in *Rios v. Cozens* (1972) 7 Cal. 3d 792, 103 Cal.Rptr. 299, on the Due Process Clause of the Fourteenth Amendment to the United States Constitution or upon the equivalent provision found in the California Constitution, or upon both. This was the inquiry posed by the United States Supreme Court in *Department of Motor Vehicles v. Rios* (1973) 410 U.S. 425, 93 S.Ct. 1019, 35 L.Ed.2d 398. The California Supreme Court answered the inquiry by certifying that it had relied upon both the Fourteenth Amendment to the United States Constitution and Article I, section 13, of the California Constitution, and that, accordingly, the California Constitution furnished an independent ground to support the result reached in the prior opinion. The California Supreme Court concluded by stating, as it did in *Kirchner* and *Krivda,* both *supra,* that it deemed it unnecessary to alter or amend its prior decision and hence reiterated and reinstated that decision in its entirety.

Since the California Supreme Court in *Krivda* held that it was relying upon both the United States Constitution and the California Constitution, even though there was no direct mention of the California Constitution in the first *Krivda* case, the same result would seem to be necessarily compelled in *Serrano* since a direct reference is made in the *Serrano* opinion to the specific California constitutional provision in footnote 11 thereof.

Kirchner, Krivda and *Rios* would seem to lead to the conclusion that the language of footnote 11 in the *Serrano* opinion must be interpreted as meaning

that the *Serrano* court's decision declaring that California's pre-SB 90 and AB 1267 financial system for the support of public schools constitutes a violation of equal protection of the laws is to be considered as a holding that such financial system constitutes a violation of the equal protection provisions of sections 11 and 21 of Article I of the California Constitution, even though by virtue of the United States Supreme Court's *Rodriguez* decision, the California system for financing public schools cannot be held to violate the equal protection provisions of the Fourteenth Amendment to the United States Constitution.

But the defendants in the case at bench assert that the *Serrano* court's opinion cannot be interpreted as a definitive holding that the California financing system for public schools violates the equal protection provisions of the California Constitution in the fact of the *Rodriguez* decision that such financing system does not violate the similar provisions of the United States Constitution. Because of the approach involved in determining the application of the federal equal-protection-of-the-laws constitutional provisions to test the validity of State legislation, the question is raised of whether the same approach must be used under the California Constitution and, if so, whether this compels the same result.

The issue becomes crucial because of the strong reliance by the California Supreme Court in *Serrano* on the cases decided by the United States Supreme Court. There is little doubt that the California Supreme Court devoted most of its attention to the plaintiffs' contentions that the financing system was in violation of the Fourteenth Amendment to the United States Constitution. After disposing of certain preliminary matters, the *Serrano* court then said: "We take up the chief contention underlying plaintiffs' complaint, namely that the California public school financing scheme violates the equal protection clause of the Fourteenth Amendment to the United States Constitution." (*Serrano, supra,* 5 Cal.3d 584, 596, 96 Cal.Rptr. 601.) The *Serrano* court then proceeded to point out that the United States Supreme Court had used a two-level test for measuring legislative classifications against the Equal Protection Clause of the Fourteenth Amendment.

In the area of economic regulation, it is pointed out that the United States Supreme Court has exercised restraint by investing State legislation with a presumption of constitutionality and requiring merely that distinctions drawn by a challenged statute bear some *rational relationship* to a conceivable legitimate State purpose.

A second and different test for measuring the validity of legislative classifications against the Equal Protection Clause of the Fourteenth Amendment is applied in cases involving "suspect classifications" or in cases touching on "fundamental interests." Here, the United States Supreme Court has adopted an attitude of active and critical analysis by subjecting a State's legislative classifications to "strict scrutiny." Under the strict scrutiny standard applied in such cases, the State bears the burden of establishing not only that it has a *compelling interest* which justifies the statutory classifications, but that the distinctions drawn by the law are *necessary* to further its purpose.

The *Serrano* court then pointed out that the United States Supreme Court has declared that a classification based on wealth or property is a "suspect classification."

An example given is the poll tax for voter's qualifications which was held unconstitutional on this ground in *Harper v. Virginia Bd. of Elections* (1966) 383 U.S. 663, 86 S.Ct. 1079. The *Serrano* court held that the California public school financing system made a classification between school districts based on the wealth of school districts, as determined by the assessed valuations of real property, irrespective of the equalization aid segment of the foundation program in view of the fact that the State funds which went to financing public schools constituted only one part of the entire public school financing system. The *Serrano* court concluded that although the foundation program partially alleviated the great disparities in local source of revenue for school purposes, the financing system as a whole generated school revenues for school districts in proportion to the wealth of the individual school district.

Plaintiffs argued before the *Serrano* court that the California school financing system had drawn lines of distinction between school districts not only on the basis of the wealth but that in so doing had created a significant impact upon a "fundamental interest" —namely, education—that these two grounds in combination established a demonstrable denial of the equal protection of the laws under the federal Fourteenth Amendment.

The *Serrano* court admitted that plaintiffs' contention that education was a *fundamental interest* which prevented any classification based on wealth was not supported by direct authority because, up to this point, wealth classifications had been invalidated by the United States Supreme Court only in conjunction with a limited number of fundamental interests such as the rights of defendants in criminal cases and in voting rights.

However, the *Serrano* court proceeded to hold that since the United States Supreme Court had held that the rights of defendants in criminal cases and the right to vote were two fundamental interests which required protection against discrimination from classifications based on wealth, there was every reason to believe that the United States Supreme Court would decide that the right to an education is equally as important as these other fundamental interests because of the importance of education both to the individual and to society. The *Serrano* court then took the final step in the application of the "strict scrutiny" equal protection standard—a determination of whether the California school financing system for public education was *necessary* to achieve a *compelling* State interest. The compelling State interest advanced by the school district defendants before the *Serrano* court to support the pre-SB 90 and AB 1267 fiscal system was California's policy to strengthen and encourage local responsibility for control of public education. This policy, said the defendants, had two aspects: (1) the granting to local school districts of effective decision-making power over the administration of their schools, and (2) the promotion of local fiscal control over the amount of money to be spent on education.

In rejecting said defendants' contentions, the *Serrano* court made two points. One was that if an assumption were made that decentralized financial decision-making was a compelling State interest, it was a cruel illusion for the poor school districts because, under the school financing system, such districts could not freely make a choice to tax themselves into educational excellence since the tax rolls did not provide such a means. The second point made by the *Serrano* court was

that the State school financing system could *not* be considered *necessary* to further local decision-making because, no matter how the State decided to finance its public education, any financial method could still leave the decision-making power in the hands of the local school districts.

Defendants also made the contention that territorial uniformity was not constitutionally required for a public school financing system. The *Serrano* court answered this contention by stating that where fundamental rights or suspect classifications are at stake, a State's general freedom to discriminate or classify on a geographical basis is significantly curtailed by the constitutional requirement of equal protection of the laws. The *Serrano* court relied upon the apportionment cases in which it has been held that accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among the State's citizens. On the basis of the principle set forth in the apportionment cases, the *Serrano* court stated that if a voter's address may not determine the weight to which his ballot is entitled, surely a parent's address should not be able to determine the quality of his child's education.

The *Serrano* court's view that, in light of a progression of Supreme Court cases, the United States Supreme Court would consider a State financing system for public education as constituting discrimination based upon wealth and, hence, based upon a suspect classification, and that education was a fundamental interest, and that the classification would be subject to strict scrutiny with the State bearing the burden of establishing that it had a compelling interest which justified the law and that the distinctions drawn by the law were necessary to further its purpose, did not bear

fruit in the *Rodriguez* case. The *Rodriguez* case was a 5-4 decision. The majority indicated that Texas virtually conceded that its foundation program system of financing public education could not withstand the strict judicial scrutiny which the United States Supreme Court had found appropriate in reviewing State legislation that interfered with *fundamental* constitutional rights or that involved *suspect classifications*.

The majority in *Rodriguez* found that the Texas financing system for public education did not involve any "suspect class." Two reasons were advanced in the majority opinion—the absence of any evidence that the financing system discriminates against any definable category of "poor" people, and the absence of any evidence that the financing system results in the *absolute* deprivation of education. For these two reasons, the majority concluded that the disadvantaged class was not susceptible to identification in traditional terms. The majority refused to accept the view that there was any discrimination against a large, diverse and amorphous class, unified only by the common factor of residence in districts that happen to have less taxable wealth than other districts. The majority opinion in *Rodriguez* also concluded that education was not a "fundamental right" protected by the United States Constitution which would require the application of the "strict scrutiny" test in determining the application of the Equal Protection Clause of the Fourteenth Amendment. The view of the majority was that education was not a right afforded explicit protection under the United States Constitution, nor a right implicitly so protected. The majority took the view that even though the high court had established a

historic dedication to public education, the undisputed importance of education was not sufficient to cause the court to depart from its usual standard for reviewing a State's social and economic legislation.

The real crux of the view of the majority is found in the statement that "[w]hatever merit appellees' argument might have if a State's financing system occasioned an absolute denial of educational opportunities to any of its children, that argument provides no basis for finding an interference with fundamental rights where only relative differences in spending levels are involved and where—as is true in the present case—no charge fairly could be made that the system fails to provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process." (*Rodriguez, supra,* 411 U.S. 1, 93 S.Ct. 1273, 1278.)

Having refused to hold that the Texas system of public school financing was a candidate for strict judicial scrutiny, the *Rodriguez* majority then considered the question of whether the Texas system nevertheless bore some *rational relationship* to a legitimate State purpose under this test for constitutionality of legislation not subject to strict judicial scrutiny. In considering the Texas system, the majority accepted the factual premise that the great interdistrict disparities in income and expenditures were attributable to the differences in the amount of assessable property available within any school district; that those districts that have more property or more valuable property have a greater capability for supplementing State funds with local funds to create greater income and greater expenditures per pupil.

The *Rodriguez* majority held that the Texas foundation program of public school financing had a legitimate State purpose of local control of education and that there was a rational relationship between the financing system and this State purpose.

In justifying the Texas financing system as having a rational relationship to a legitimate State purpose, the *Rodriguez* majority reasoned that local control gives the local parents and residents freedom to devote more money to the education of their children and provides an opportunity to such parents and residents for participation in the decision-making process that determines how local tax money is to be spent; that each locality is thus free to tailor local programs to local needs; that such pluralism affords some opportunity for experimentation, innovation, and a healthy competition for educational excellence.

The *Rodriguez* majority conceded, however, that reliance on local property taxes for school revenue provides less freedom of choice with respect to school expenditures for some school districts than for others, but that the existence of "*some inequality*" in the manner in which the State's purposes are achieved is not alone a sufficient basis for striking down the entire system; that it may not be condemned simply because it imperfectly effectuates the State's goals.

The *Rodriguez* majority stated that the financing system cannot be condemned constitutionally because other methods of financing the State's interest which occasion "less drastic" disparities in expenditures might be conceived. This principle follows from the constitutional rule that only where State action impinges on the exercise of fundamental constitutional rights or

liberty must it be found to have chosen the least restrictive or onerous alternative.

The *Rodriguez* majority concluded that the United States Supreme Court was unwilling to assume a level of wisdom superior to that of legislators, scholars, and educational authorities in 49 states, especially where the alternatives proposed have been only recently conceived and nowhere yet tested; that by applying the constitutional standard under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution—whether the challenged State action rationally furthers a legitimate State purpose or interest—it follows that the Texas foundation program of financing public education must be held to be valid and constitutional as it abundantly satsfies this standard.

Four members of the *Rodriguez* court dissented from the views of the five-member majority on various grounds. The minority views disagreed with the majority conclusions that education was not a fundamental interest requiring the strict scrutiny test of constitutionality and that there was not a suspect classification involved. Some members of the *Rodriguez* minority considered the Texas statutory scheme devoid of any rational basis and violative of the Equal Protection Clause even under the lesser constitutional standard of rational relationship.

Defendants in the case at bench contend that since the *Serrano* court relied upon a belief and expectation that the United States Supreme Court would hold that education was a fundamental interest and that the strict judicial scrutiny test was the applicable standard to test the constitutionality of a State's financing system for public schools, the rational relationship standard

must now be applied under the California Constitution because of the *Rodriguez* court's rejection of the strict scrutiny test and the adoption of the rational relationship standard for the United States Constitution. This contention evokes two questions. *First,* did the *Serrano* court rely exclusively on authorities from the United States Surpeme Court in adopting the strict scrutiny standard of constitutionality? *Second,* are there good and sufficient reasons for the California Supreme Court to apply the strict scrutiny standard of constitutionality under the California Constitution, even though the United States Supreme Court in *Rodriguez* held to the contrary insofar as the United States Constitution is concerned?

In reaching its conclusion that education is a "fundamental interest," the *Serrano* court pointed out that "[t]he twin themes of the importance of education to the individual and to society have recurred in numerous decisions of this court." (*Serrano, supra,* 5 Cal.3d 584, 606, 96 Cal.Rptr. 601.) California decisions cited to support this principle included *San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 92 Cal.Rptr. 309; *Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 31 Cal.Rptr. 606; *Manjares v. Newton* (1966) 64 Cal.2d 365, 49 Cal.Rptr. 805; and the much earlier case of *Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 226 P. 926.

In addition, the *Serrano* court relied upon the fact that the importance of education has been set forth *explicitly* in the California Constitution. In drawing an analogy between education and voting, the *Serrano* court emphasized that both are crucial to participation in, and the proper functioning of, a democracy. The court quoted from *Reynolds v. Sims* (1964) 377 U.S.

533, 562, 84 S.Ct. 1362, in its statement that voting must be regarded as a fundamental right because it is "preservative of other basic civil and political rights. . . ." and then stated: "The drafters of the California Constitution used this same rationale—indeed, almost identical language—in expressing the importance of education. Article IX, section 1 provides: 'A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement' " (*Serrano, supra,* 5 Cal. 3d 584, 608, 96 Cal.Rptr. 601.)

Furthermore, in discussing defendants' contention that the matter of wealth discrimination between school districts involved, at most, de facto discrimination, the *Serrano* court again pointed out that the subject of education constituted an integral part of the California Constitution. Thus, the court remarked that "we find the case unusual in the extent to which governmental action *is* the cause of the wealth classifications. The school funding scheme is mandated in every deatil by the California Constitution and statutes." (*Serrano, supra,* 5 Cal.3d 584, 603, 96 Cal.Rptr. 601.)

In cases decided since *Serrano,* the California Supreme Court has made clear that the two-pronged test for deciding the constitutional validity of State legislation under the principle of equal protection of the laws is one applied by it *independently* of the fact that the Supreme Court of the United States also applies such a test.

In *Curtis v. Board of Supervisors* (1972) 7 Cal.3d 942, 951-952, 104 Cal.Rptr. 297, the issue concerned

the validity, under the equal protection provisions of both the United State and the California Constitutions, of a section of the Government Code dealing with procedures for incorporation of a city. The court stated: "We set forth, first, the legal principle of equal protection of the laws that control the instant situation. . . . In determining the validity of legislative distinctions, *this court and the United States Supreme Court apply a two-level test.* (Emphasis added.) (See, e.g., *Weber v. Aetna Casualty & Surety Co.* (1972) 406 U.S. 164 [31 L.Ed.2d 768, 92 S.Ct. 1400].) In the typical equal protection case the classification need only bear a rational relationship to a conceivable legitimate state purpose; [on] the other hand, in cases involving 'suspect classifications' or touching on 'fundamental interests,' . . . the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. [Citations omitted.] Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that that distinctions drawn by the law are *necessary* to further its purpose." (Citation omitted.)

In *Crownover v. Musick* (1973) 9 Cal.3d 405, 107 Cal.Rptr. 681, city ordinances that prohibited, among other things, the use of topless waitresses in restaurants and bars were attacked as violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because of the distinction made between theater-type establishments and other public eating places. The court applied the same technique used in *Serrano* with respect to the application of the California Constitution by stating in a footnote that since the court had construed the provisions of

Article I, sections 11 and 21, of the California Constitution as "substantially the equivalent" of the federal Equal Protection Clause, the discussion of plaintiffs' federal challenge would apply to any claim assertible under the State Constitution, citing the *Serrano* decision. (See *Crownover, supra,* 9 Cal.3d 405, 429, fn. 17.) In *Crownover,* the dissenting opinion contained this statement: "This two-level analysis bears a close similarity to the approach used by *this court and* the Supreme Court in equal protection cases." (*Crownover, supra,* 9 Cal.3d 405, 440, 107 Cal.Rptr. 681.) (Emphasis added.)

It is significant that *Crownover* was decided by the California Supreme Court on May 1, 1973 which is almost two months after the United States Supreme Court's *Rodriguez* decision of March 21, 1973. Had the California Supreme Court in *Serrano* applied the two-level standard for testing equal-protection-of-the-laws constitutionality only because of the view of the United States Supreme Court, it is doubtful if the *Serrano* citation would have been used in *Crownover.* Prior to *Rodriguez* but subsequent to *Serrano,* the California Supreme Court cited the *Serrano* decision in several cases dealing with the two-level standard for testing the validity of State legislation against the equal protection provisions of both the United States and California Constitutions. Such cases include *Raffaelli v. Committee of Bar Examiners* (1972) 7 Cal.3d 288, 101 Cal.Rptr. 896; *Curtis v. B oard of Supervisors* (1972) 7 Cal.3d 942, 104 Cal.Rptr. 297; and *Brown v. Merlo* (1973) 8 Cal.3d 855, 106 Cal.Rptr. 388.

It is significant that in *Curtis,* in holding that a section of the California Government Code was unconstitutional, the court stated: "We have concluded that

the section is, indeed, unconstitutional under the equal protection clause of the Fourteenth Amendment to the United States Constitution and the correlative provisions of the California Constitution. (Cal. Const., art. I, §§ 11, 21; see *Serrano v. Priest* (1971) 5 Cal.3d 584, 596, fn. 11 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187].)" (*Curtis, supra,* 7 Cal.3d 942, 946, 104 Cal.Rptr. 297.) In *Brown,* in which the court held invalid the "guest statute" which denied recovery to a guest for his driver's negligence, the court refused to apply the "strict scrutiny" standard and stated that neither reason nor authority supported the claim that the guest's "right to sue for negligently inflicted injuries is a 'fundamental interest' analogous to voting rights *or education.*" (*Brown, supra,* 8 Cal.3d 855, 862, fn. 2, 106 Cal.Rptr. 388.) (Emphasis added.)

Even though the United States Supreme Court in *Rodriguez* has disagreed with the *Serrano* court in considering education to be a "fundamental interest" under the United States Constitution, it is inexorably apparent to this trial court that our California Supreme Court will so interpret its *Serrano* decision and hold that *education* is a "fundamental interest" under the California Constitution, and that the validity of the California financing system for public schools, as embodied now in the SB 90 and AB 1267 legislation, must be tested under the equal protection provisions of the State Constitution by the "strict scrutiny" standard.

One major reason asserted in *Rodriguez* for its majority decision was that education was *not* among the rights afforded *explicit* protection under the United States Constitution. Nor could the *Rodriguez* majority

find any basis for holding that education was implicitly protected in the United States Constitution. The situation, however, under the California Constitution is the very opposite. As the *Serrano* court pointed out, the financing of public schools is *mandated* by the provisions of the California Constitution. It is highly unlikely, therefore, that the California Supreme Court will change its thinking by any reasoning put forth by the majority of the United States Supreme Court in the *Rodriguez* case. This seems especially true in view of the following resolute statement made by the *Serrano* court: "We are convinced that the distinctive and priceless function of education in our society warrants, *indeed compels,* our treating it as a 'fundamental interest.'" (*Serrano, supra,* 5 Cal.3d 584, 608-609, 96 Cal.Rptr. 601.) (Emphasis added.)

The strong feeling by the California Supreme Court with respect to the uniqueness and fundamentality of education as a "compelling state interest" is found in *Ramirez v. Brown* (1973) 9 Cal.3d 199, 211 107 Cal.Rptr. 137, decided approximately ten days after *Rodriguez,* in which the court reiterated its position by stating: "And in *Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187], we declared that California's school financing system was not 'necessary' to promote either of the two compelling interests asserted, i.e., administrative and fiscal control over the schools at the local level."

In addition, consideration must be given to the fact that *four* members of the *Rodriguez* court disagreed with the five-member majority in its interpretation of the application of a State's financing system of public schools to the demands of the equal-protection-of-the-laws provisions of the Fourteenth Amendment to the

United States Constitution. This is especially significant in light of the cautionary postscript stated by the *Rodriguez* majority. The *Rodriguez* majority opinion stated that the court's decision was not to be viewed as placing a judicial sanction on the status quo of a State's foundation program system of financing public schools; that the need was apparent for reform of tax systems which may have relied too long and too heavily on the local property tax; that certainly innovative new thinking as to public education, its methods and its funding was necessary to assure both a higher level of quality and greater uniformity of opportunity; that these matters merited the continued attention of the scholars who already have contributed much by their challenges; and that the ultimate solutions must come from the lawmakers and from the democratic pressures of those who elect them.

This cautionary postscript stated by the *Rodriguez* majority in its opinion is inappropriate for a consideration of important constitutional issues. By its postscript, the *Rodriguez* majority seems apologetic for taking the constitutional view that it espoused, in spite of its disclaimer. This postscript of the majority seems to support a conclusion that the constitutional basis of the majority opinion is predicated primarily on the fear of disturbing the status quo. Certainly, the California Supreme Court will take the posture that important constitutional issues ought not be decided on the basis of a dislike for changing the status quo.

That the views of the five-member *Rodriguez* majority will not be followed by the California Supreme Court is seen in the bold, enlightened and courageous language of the last paragraph of the *Serrano* court's opinion: "By our holding today we further the cherished

idea of American education that in a democratic society free public schools shall make available to all children equally the abundant gifts of learning. This was the credo of Horace Mann, which has been the heritage and the inspiration of this country. 'I believe,' he wrote, 'in the existence of a great, immortal, immutable principle of natural law, or natural ethics,—a principle antecedent to all human institutions, and incapable of being abrogated by an ordinance of man . . . which proves the *absolute right* to an education of every human being that comes into the world, and which, of course, proves the correlative duty of every government to see that the means of that education are provided for all. . . .'" (*Serrano, supra,* 5 Cal.3d 584, 619, 96 Cal.Rptr. 601.)

That it is highly unlikely that *Rodriguez* will have any effect on the views of the California Supreme Court is further seen in the language found in a concurring opinion by three members of that court in the case of *Campbell v. Graham-Armstrong* (1973) 9 Cal. 3d 482, 107 Cal.Rptr. 777, decided several months after the *Rodriguez* decision of the United States Supreme Court. The following statement was made with a citation of *Serrano:* "Statutorily enforced 'uniformity of treatment' of teachers is a step towards fulfillment of this court's call for state-wide 'uniformity of treatment' of pupils." (*Campbell, supra,* 9 Cal.3d 482, 492, 107 Cal.Rptr. 777.) (Concurring opinion.)

It is the holding of this trial court, therefore, that the validity under the California Constitution of the State's system of financing public elementary and secondary schools, as modified by the SB 90 and AB 1267 legislation, must be tested by the "strict scrutiny" standand and not by the "rational relationship" standard.

In their answers to plaintiffs' complaint in the case at bench, defendants have alleged a number of affirmative defenses. One question presented for decision is the extent to which such defenses have been disposed of by the *Serrano* court's opinion and have become the law of the case and are not, therefore, open for independent determination by this trial court.

One defense raised by defendants is that the plaintiffs' causes of action do not present a judicially manageable controversy and, hence, plaintiffs are entitled to no relief on this ground. Such defense was determined to be invalid by the *Serrano* court's opinion and, therefore, is not open for independent determination by this trial court.

As a part of defendants' theory that plaintiffs' case presents a nonjudicially manageable controversy, defendants assert that even if plaintiffs were able to establish that the California system of financing public school education failed to comply with the equal-protection-of-the-laws provisions of the State Constitution, the sole power to rectify the situation lies with the legislative branch of the State government and not with the judiciary. Again, this defense has been ruled invalid by the *Serrano* court's opinion and the trial court may not consider the question as an independent matter.

Defendants have also asserted in defense that there should be no judicial intervention with respect to the system of financing public school education because of the doctrine of separation of powers between the legislative, executive and judicial branches of government, and that any action by the judiciary would constitute an interference with the constitutional pre-

rogatives of the legislative and executive branches. Here again, however, the *Serrano* court has held that the judicial branch has the power to determine whether the system of financing public school education constitutes a violation of the equal-protection-of-the-laws provisions of the California Constitution. Therefore, the defense that the constitutional doctrine of separation of powers precludes judicial action has been decided adversely to defendants by the *Serrano* court's opinion.

Defendants also have asserted as an affirmative defense that the granting of any judicial relief to plaintiffs in this case at bench would paralyze efforts of the California Legislature (1) to inaugurate innovative pilot educational programs; (2) to provide differing financing support for the differing educational needs of students; (3) to enable school districts to separately accept free gifts; (4) to enable school districts to separately apply for and receive federal grants in support of general educational programs or projects, or in general support of school district functions; and (5) to provide differing levels of financial support to school districts on the basis of differing costs to such districts of providing the same level of educational services and substantially equal educational materials and physical plant facilities. The *Serrano* court has disposed of these contentions by holding that if plaintiffs establish the truth of the allegations of their complaint, the school financing system must fall and the plaintiffs would be entitled to appropriate judicial relief.

Another defense asserted by defendants is that the legal principle sought to be established by plaintiffs would necessarily apply with equal force to other vitally important governmental functions provided by local

governmental units, such as police protection, fire protection, health services, recreational facilities and services, sanitary services, flood control and air and water pollution control. With respect to these governmental functions, defendants suggest that to subject the State of California's financing of such vitally important governmental services to "strict judicial scrutiny" and to require that they least onerously serve a compelling State interest, would almost certainly invalidate them on the basis of the principle of equal protection of the laws; that were the courts to so invalidate the financing of such important governmental functions, the courts would be assuming for the judicial branch of government functions allocated by the people of the State, through the adoption of the State Constitution, to the legislative and executive branches of government; that the functions of reducing and eliminating any inequities in the public financing of such important governmental functions belong logically and practically to the legislative and executive branches of the government rather than to the judicial branch.

This same argument, however, was presented by defendants to the *Serrano* court and rejected by that court as a non sequitur. The *Serrano* court held that any mandate from the constitutional principle of equal protection of the laws, which operates to preclude a discrimination in the quality of public education based upon the relative wealth of school districts, does not require the same result with respect to all other governmental entities involved in tax-supported public services because public education has its own uniqueness among public activities. Hence, these contentions are not open to independent analysis by this trial court.

Defendants also contend, by way of an affirmative defense, that the defendants in this lawsuit are legally unable, irrespective of judicial command, to reallocate the funds available for the financial support of the school system as prayed for by plaintiffs, and that the only legally constituted body which may so reallocate funds is the State Legislature which is not a party to this lawsuit; that the plaintiffs, therefore, should not be able to seek by indirection to accomplish that which cannot be accomplished directly. These contentions were also made by defendants in argument before the *Serrano* court and held to be no defense to plaintiffs' claims for relief. Having been determined adversely to defendants by the *Serrano* court, these matters are not open to relitigation at the trial-court level by defendants.

Defendants have put forth a contention that, with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution unavailable to plaintiffs because of the *Rodriguez* decision, the California Constitution by itself cannot be interpreted to provide plaintiffs the relief they seek. This contention is predicated on the fact that one section of the California Constitution specifically authorizes the imposition of real proerty taxes by school districts to raise revenues for school purposes. The defendants assert, therefore, that since this section of the California Constitution authorizes disparities in school revenues and expenditures based upon disparities in wealth due to differences in assessed values of property, it cannot be held that this section of the California Constitution is in violation of other sections of the California Constitution providing for equal protection of the laws.

For this analysis, defendants rely upon a paragraph of section 6 of Article IX which states that "The Legislature shall provide for the levying annually by the governing body of each county, and city and county, of such school district taxes, at rates not in excess of the maximum rates of school district tax fixed or authorized by the Legislature, as will produce in each fiscal year such revenue for each school district as the governing board thereof shall determine is required in such fiscal year for the support of all schools and functions of said district authorized or required by law." This wording of section 6 of Article IX is a result of a 1952 initiative amendment. However, substantially identical language started with the 1920 initiative amendment to Article IX, section 6.

Defendants urge that this paragraph of section 6 of Article IX cannot be held to be condemned by the provisions of sections 11 and 21 of Article I of the same California Constitution. Sections 11 and 21 are the sections which have been construed by the California Supreme Court as "substantially the equivalent" of the equal protection provisions of the Fourteenth Amendment to the United States Constitution. See *Dept. of Mental Hygiene v. Kirchner* (1965) 62 Cal.2d 586, 588, 43 Cal.Rptr. 329.

It is the contention of defendants that if the provisions of Article IX, section 6, are in conflict with the equal protection provisions of Article I, sections 11 and 21, the former must prevail because of the principle of constitutional construction that a more specific and more recently enacted constitutional provision must prevail if such provision conflicts with some other provision of the Constitution. This principle of preference in case of conflicting provisions was stated

in *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 268 P.2d 723, and in *County of Placer v. Aetna Cas. etc. Co.* (1958) 50 Cal.2d 182, 323 P.2d 753, and was reiterated in the *Serrano* opinion.

Plaintiffs contend that this principle of preference in dealing with conflicting constitutional provisions is foreclosed by the *Serrano* court's opinion and is now the law of the case. The plaintiffs assert that this trial court cannot consider this question of constitutional interpretation because the *Serrano* court's holding is that if plaintiffs are able to prove the allegations of their complaint, the financial system supporting the public schools must fall as a violation of the equal protection provisions of the State Constitution, as well as of the United States Constitution.

This matter becomes important because the major thrust of the *Serrano* opinion related to the requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The serious question is whether defendants' contentions relative to the State Constitution were given the in-depth analysis by the California Supreme Court in *Serrano,* which undoubtedly would have been given to them had *Rodriguez* been decided prior to the *Serrano* court's decision in 1971 and if the only attack upon the California public school financing system had been predicated by the plaintiffs upon the State Constitution alone. This trial court, therefore, will deal with the points raised by defendants in light of the *Serrano* court's discussion rather than simply holding, without analysis, that the *Serrano* court's decision has established the law of the case contrary to the contentions of defendants.

In urging that disparities in school revenues between school districts are mandated by section 6 of Article IX of the California Constitution, defendants rely in part upon certain language of the *Serrano* opinion. Thus, defendants refer to that part of the *Serrano* opinion in which it is said that section 6 of Article IX of the California Constitution "specifically authorizes the very element of the fiscal system of which plaintiffs complain." (*Serrano, supra,* 5 Cal.3d 584, 596, 96 Cal.Rptr. 601.) But this language by the *Serrano* court must be considered in the context in which the language appears. In using this language, it is apparent that the *Serrano* court was simply rejecting a contention made by plaintiffs that the school financing system violated section 5 of Article IX of the California Constitution which requires the Legislature to set up a system of common schools.

In dealing with section 5 of Article IX with its reference to a "system of common schools," the *Serrano* court points out that section 5 contains no reference to school financing and that the California Supreme Court had never interpreted that particular constitutional provision to require uniform school spending, but rather to require uniformity in terms of the prescribed courses of study and educational progression from grade to grade. It is in this frame of reference that the *Serrano* court stated that while section 5 of Article IX made no reference to school financing, section 6 of the very same Article did authorize the very element of the fiscal system of which plaintiffs complained. The court's statement was made in answer to the plaintiffs' contention, made to the *Serrano* court, that section 5 of Article IX ought to be interpreted as requiring an equality or uniformity of educational expenditures.

To have given section 5 the interpretation requested by plaintiffs would have brought that section into clear conflict with the provisions of section 6 of the same Article. This result would follow because section 6 could not logically be interpreted to require the raising of school funds through property taxation to produce a uniformity of expenditure per pupil for all school children of the State. In answer to plaintiffs' contention with respect to the meaning of section 5, the *Serrano* court was led to refer to the maxim of statutory construction that where constitutional provisions can reasonably be construed to avoid a conflict, such an interpretation ought to be adopted. If section 5 were to be construed to apply to school financing and it would then clash with section 6 so that the two sections would be deemed irreconcilable, section 6 would have to prevail because it is the more specific provision and was adopted more recently. Hence, the *Serrano* court concluded, but solely with respect to the question of the appropriate interpretation of section 5 of Article IX, that "we must reject plaintiffs' argument that the provision in section 5 for a 'system of common schools' requires uniform educational expenditures." (*Serrano, supra,* 5 Cal.3d 584, 596, 96 Cal.Rptr. 601.)

Defendants further contend that, since the *Serrano* court has interpreted section 6 of Article IX as producing disparities in school revenues and expenditures between school districts because this section authorizes school districts to raise school funds through property taxation, if there is a conflict between section 6 of Article IX and the equal protection provisions of sections 11 and 21 of Article I, section 6 must prevail because it is more specific and was adopted last.

Plaintiffs reply to these contentions of defendants by asserting that there is no conflict between section 6 of Article IX and sections 11 and 21 of Article I. Plaintiffs take the position that the language of section 6 is general in nature and does not specifically authorize disparities in revenues and expenditures between school districts based upon disparities in assessed valuations of property. Plaintiffs point out that the provisions of section 6 do not refer at all to assessed valuations of property as a tax base. Plaintiffs conclude, therefore, that the court is not required to make a decision upon the premise that there exists a conflict between Article I, sections 11 and 21, and Article IX, section 6, of the California Constitution; that the applicable principle of construction is that which states that where constitutional provisions can reasonably be construed to avoid a conflict, such an interpretation should be adopted. Plaintiffs urge that section 6 of Article IX be interpreted to the effect that it does not authorize the imposition of property taxes to raise revenues for varying school expenditures between school districts based upon wide disparities in the taxable wealth of such school districts. The approach of plaintiffs is that, although the Legislature derives its power to authorize the levying of property taxes for school purposes in the various school districts from section 6 of Article IX, such authorization must be exercised in conformity with other provisions of the California Constitution.

According to plaintiffs, there can be no authorization from section 6 to the Legislature to provide for the levying of property taxes in a way that conflicts with the equal-protection-of-the-laws provisions of sections 11 and 21 of Article I and, hence, that any legis-

lative scheme which permits the amounts of tax revenues to be predicated upon wide disparities in assessed valuations of property necessarily violates the equal-protection-of-the-laws provisions of the California Constitution. That such an approach has been taken in connection with constitutional authorization to the Legislature is demonstrated by cases such as *In re Jacobson* (1936) 16 Cal.App.2d 497, 60 P.2d 1001, and *People v. Anderson* (1972) 6 Cal.3d 628, 100 Cal.Rptr. 152.

Although the reasoning found in *In re Jacobson* and in *Anderson* appears to be appropriate to an analysis of section 6 of Article IX and its relationship to the equal-protection-of-the-laws provisions of sections 11 and 21 of Article I, there is an even more compelling rationale which moves this trial court to a determination that section 6 of Article IX cannot be construed as authorizing significant disparities in school revenues and school expenditures between school districts based upon the comparative wealth of such school districts as determined by assessed valuations of real property. The rationale which impresses this court is that section 6 of Article IX of the California Constitution did not create the various school districts with their geographical boundaries and with their differences in property wealth. Section 6, Article IX, is written to apply to whatever school districts have been created by the California Legislature.

The *Serrano* court makes it clear that in carving the State of California into geographical school districts, the Legislature was under a constitutional duty to draw the geographical boundary lines of such districts in a way that would *not* result in a classification

of the ability to raise revenues for school purposes by the property wealth of school districts in violation of the equal-protection-of-the-laws mandate of sections 11 and 21 of Article I of the State Constitution.

Section 6 of Article IX, therefore, cannot be considered in an isolated fashion or manner. Had the California Constitution itself, for example, set up the geographical limits of the Beverly Hills School District and of the Baldwin Park School District, defendants reasonably could contend that said section 6 authorized the classification of educational opportunities in accordance with the wealth of the school districts in which pupils and their parents resided. If section 6 of Article IX has so provided, the California system of financing public schools would be immune from attack under the equal-protection-of-the-laws provisions of Article I, sections 11 and 21 of the California Constitution.

A careful reading of the *Serrano* court's opinion impels this trial court to make this analysis and reach the result indicated. The *Serrano* court stated unequivocally that it found this case at bench to be unusual in the extent to which governmental action is the cause of the wealth classifications involved in school financing, and that the program of school funding is mandated in every detail by the State Constitution and statutes. It is not without significance that the *Serrano* opinion states that although private residential and commercial patterns may be partly responsible for the distribution of assessed valuations throughout the State, such patterns are shaped and hardened by zoning ordinances and other governmental land-use controls which promote economic exclusivity; that since the distribution of assessed valuations throughout the

State is largely the result of zoning ordinances and other governmental land-use controls and not through mandate of any specific or general provisions of the California Constitution, the equal-protection-of-the-laws provisions of *that* Constitution require conformance to its mandate and nullify such zoning ordinances and land-use controls to the extent that they have helped produce substantial disparities among school districts in the amount of revenues available for education.

The conclusion is thus inescapable that the provisions of section 6 of Article IX that authorize local property taxes to be raised and used for public education cannot be read and construed in a vacuum and disassociated from the statutory and other nonconstitutional provisions which caused the unequal distribution of assessed valuations of property throughout the State.

Furthermore, with respect to the creation and development of school districts, the *Serrano* court stated, without equivocation, that it was governmental action that drew the school district boundary lines that determined how much local wealth each school district would contain. Article IX, section 14 of the California Constitution provides that "The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and junior college districts, of every kind and class, and may classify such districts." There is nothing contained in this section 14 which authorizes the Legislature to so draw school district boundaries that the quality of a child's education is made dependent on the wealth of the school district in which such child resides and attends school in terms of its assessed valuations of property. In *Worthington S. Dist. v. Eureka S. Dist.* (1916) 173 Cal. 154, 156, 159 P.

437, the court remarked that: "The power of the legislature over school district is plenary. (Citations omitted.) It may *divide, change,* or *abolish* such districts at pleasure, . . ." (Emphasis added.) Similar language is repeated in *Mountain View Sch. Dist. v. City Council* (1959) 168 Cal.App.2d 89, 335 P.2d 957.

These authorities indicate quite clearly that the Legislature was not obligated by any command of the California Constitution to create certain school districts as high-wealth school districts and others as low-wealth school districts in terms of assessed valuations of real property per pupil. The California Legislature's actions in creating, or in authorizing the creation of, school districts with geographical boundaries which resulted in great disparities of local wealth between such school districts so that widely varying amounts of tax revenues are produced to educate the pupils of such districts, cannot be justified as constitutionally mandated or authorized by section 6 of Article I. Had the legislative actions which caused the creation of school districts resulted in geographical boundary lines so that there were no substantial disparities in property wealth between the various school districts, the authorization contained in section 6 of Article IX for school district revenues to be raised through local property taxation could not possibly be interpreted as an authorization for the creation of disparities in school revenues between school districts.

Since there is no California constitutional authorization to the Legislature to create school districts with significant wealth disparities, any legislative action that established the geographical boundaries of school districts was required to be in compliance with the equal-

protection-of-the-laws provisions of sections 11 and 21 of Article I. To the extent that legislative actions, in drawing or authorizing the drawing of geographical boundaries of school districts, have produced the consequences of substantial disparities in revenues for school purposes, and a denial of equal treatment of the school children of the State, such legislative actions must be held to be unconstitutional and invalid as a violation of sections 11 and 21 of Article I of the California Constitution. That such a result flows from the holding and reasoning of the *Serrano* court seems to this trial court to be clear, undoubted, and unassailable.

We turn next to a consideration of the issue of whether the plaintiff-children and the plaintiff-parents have sustained their burden of proving the truth of the allegations of their complaint in light of the changes in the California system of financing public education wrought by SB 90 and AB 1267. One question to be decided is whether these changes have eliminated the unconstitutional features of the pre-SB 90 and AB 1267 public school financing system set forth in the *Serrano* court's opinion and, if not, whether the evidence presented in the case at bench establishes as true plaintiffs' allegations of constitutional invalidity as required by the *Serrano* court's opinion.

The parties are not in agreement as to the exact holding of the *Serrano* court in terms of defining the necessary elements that the State's public school financing system must have to avoid collision with the equal-protection-of-the-laws provisions of the California Constitution.

The parties, however, have agreed that the following matters are true and are not in dispute:

1. The plaintiffs' complaint does not attack the validity of the California public school financing system for community colleges.

2. Disparities exist among many of the school districts of the State and of the County of Los Angeles in the tax base, i.e., assessed valuation of real property per pupil.

3. Disparities exist among many of the school districts of the State and of the County of Los Angeles in the dollar amounts available and spent per pupil for education.

4. Some school districts have a higher tax rate than other school districts and yet produce less revenue per pupil than some school districts with a lower tax rate.

5. Some school districts with relatively low per pupil expenditures have a lower assessed valuation per pupil than some school districts with relatively high per pupil expenditures.

6. Some school districts with relatively low per pupil expenditures have higher tax rates than some school districts with relatively high per pupil expenditures.

7. The assessed valuation per pupil in some school districts is one determinant of their educational expenditures.

8. The superintendents of the intervening defendant school districts believe that the educational expenditures of their respective school districts have been spent wisely and efficiently for the most part.

9. The superintendents of the intervening defendant school districts generally try to get the maximum out

of their educational expenditures in terms of the educational opportunities made available.

10. All or most school districts in the State seek to provide the best education possible.

11. A child's self-concept can be improved by the educational process.

12. The educational process can reinforce a child's negative self-concept.

13. Schools can, do, and should, play a role in providing a child with acceptable social values and behavior norms.

14. Schools can, do, and should, play a role in equipping children with what it takes to get along in a technological society.

15. Schools can, do, and should, play a role in making children better future citizens.

16. Many components of a good education are not measured by pupil performance on achievement tests.

17. Many aspects of a student's capabilities and progress are not measured by performance on achievement tests.

18. The scope of skills measured by achievement tests is limited.

19. Morale problems among a school district's teaching staff can reduce teacher effectiveness in the classroom.

20. Some school districts could not reduce their budgets by $300 per average daily attendance (ADA) without adversely affecting the quality of education.

21. With respect to the plaintiff-children, their respective ages, citizenship, residences and school districts in which they are, or have been, enrolled or attending.

22. With respect to the plaintiff-parents, their respective citizenship, residences, identities of their plaintiff-children, taxpaying status and the status of each of them as to ownership of real property assessed for tax purposes.

23. Plaintiff-parents are required to pay a higher property tax rate—to be distinguished from a greater number of tax dollars—than taxpayers in many other school districts.

24. The named plaintiff-children, acting through their respective guardians ad litem, and the named plaintiff-parents, have capacity and standing to bring their lawsuit.

To properly test the effects of SB 90 and AB 1267 on the question of the components of a public education financing system that will satisfy the *Serrano* court's holding, we must start with a determination of just what constitutes the *Serrano* court's holding. At one point in the opinion, the court emphasized that a financing system is invalid if it conditions the full entitlement of the fundamental interest of education on the basis of the wealth of a school district, if it classifies its recipients on the basis of their collective affluence, if it makes the quality of a child's education depend upon the resources of his school district and ultimately upon the pocketbook of his parents. At another point, the *Serrano* court said that if the public school financing system produces substantial disparities among school districts in the amount of revenue available for education as a result of the geographical accident of differing assessed valuations of property in the various school districts, the system constitutes a violation of equal protection of the laws. The *Serrano* court also refers to the fact that the plaintiff-parents

had alleged that they were required to pay taxes at a higher rate than taxpayers in many other districts in order to secure for their children the same or lesser educational opportunities. In the *Campbell* case, *supra,* some of the Justices interpreted *Serrano* as holding that there must be a statewide uniformity of treatment of pupils.

It seems to this trial court, therefore, that *Serrano* must be considered as holding the following in terms of the mandate of the equal-protection-of-the-laws provisions of the California Constitution with respect to the State's financing system for public education: The State's public school financing system must provide for a uniformity and equality of treatment to all the pupils of the State; that uniformity and equality of treatment mean that, if there is a ccrrelation or meaningful relationship between the amount of money expended by a school district on pupils for education and the quality of the education provided such pupils by such expenditures, the State may not provide for, or permit the development of, significant disparities in expenditures between school districts to be caused by, or made possible by, the irrelevant factor of significant disparities in assessed valuations of real property between school districts; that uniformity and equality of treatment of pupils also mean that parent-taxpayers of children in some school districts may not be required to pay significantly higher tax rates than parent-taxpayers in other school districts in order for the former's children to receive the same or a lower quality of education than that received by the latter's children. This court accepts the position of defendants that plaintiffs must prove that there is a meaningful relationship between the quality of a child's education and the amount

of money spent by the school district for his education; that if the evidence does not establish that the amount of expenditures per pupil plays a part in the *quality* of a child's education, then disparities in school-district wealth with the consequent disparities in expenditures per pupil between school districts have no constitutional significance in terms of equal protection of the laws.

There is also presented for this court's determination a question which the *Serrano* court did not answer—what is the test to be applied in determining the *quality of education* that exists within a school district? Is the quality of a child's education to be measured by that child's achievement results on standardized tests? Is the test of a *high-quality* or a *poor-quality* education to be based upon achievements of students measured by standardized test-score results? One view is that pupil achievement, as measured by test-score results, is the appropriate standard to be used to determine whether a school district has provided its students with a high-quality or a low-quality education. This view represents a *pupil-achievement standard.* This is the standard that defendants urge should be applied in the case at bench.

Plaintiffs urge primarily an entirely different view—a *school-district-offering* standard. Plaintiffs assert that equality of education between pupils of different school districts means that school districts must possess an equal ability in terms of revenue to provide students with substantially equal opportunities for learning, such as being exposed to experienced and effective teachers, comparable class sizes and teacher-pupil ratios, comparable selectivity in course offerings, modern equipment, high quality materials and high-quality buildings. This

court must decide which of these two standards is the appropriate test, or whether a combination of the two should be applied in deciding if disparities in educational expenditures between school districts determine whether students in low-wealth districts receive only a fair-quality or a low-quality education while students in high-wealth districts receive a high-quality or a superior-quality education.

The evidence presented in this case at bench has been voluminous. As a result, the trial involved 62 court days. Approximately 250 exhibits were introduced into evidence. Approximately 43 witnesses testified—all experts in fields relevant to the issues involved in this case, such as the fields of education, educational finance, educational research and analysis, statistical research, and computer programming and analysis.

The witnesses who testified consisted of the following: EDWIN H. HARPER, California's deputy Superintendent of Public Instruction for Administration; CHARLES S. BENSON, Professor in the Department of Education of the University of California, Berkeley, and Director of the consultant staff to the California Senate's Select Committee on School District Finance; WILSON C. RILES, one of the defendants and California's Superintendent of Public Instruction; RICHARD M. CLOWES, one of the defendants and Los Angeles County Superintendent of Schools; HYRUM W. LOUTENSOCK, Superintendent of Lynwood Unified School District; DALE M. HARTER, Superintendent of El Segundo Unified School District, which is one of the school-district defendants; ROBERT E. SHANKS, Superintendent of the Burbank Unified School District, which is one of the school-district de-

fendants; HOUSTON I. FLOURNOY, one of the defendants and Controller of the State of California; PAUL H. HOLMES, Senior Consultant to the California Assembly's Education Committee; HENRY W. DINGUS, Superintendent of San Marino Unified School District, which is one of the school-district defendants; WALTER J. ZIEGLER, Superintendent of Simi Valley Unified School District; BURTIS E. TAYLOR, Superintendent of Glendale Unified School District, which is one of the school-district defendants; JERRY HOLLAND, Superintendent of Baldwin Park Unified School District; WILLIAM J. JOHNSTON, Superintendent of Los Angeles Unified School District; KENNETH E. RICKETTS, Superintendent of Lawndale Elementary School District; STUART E. GOTHOLD, Superintendent of South Whittier Elementary School District; KENNETH L. PETERS, Superintendent of Beverly Hills Unified School District, which is one of the school-district defendants; RALPH LAWS, Chief Economist for California's Department of Finance; OSCAR E. ANDERSON, a private consultant on school finance and especially active for the California Teachers Association; JOHN E. COONS, Professor of Law, School of Law of the University of California, Berkeley, and co-author of the book, "Private Wealth and Public Education"; WILLIAM O. WRIGHT, Superintendent of Long Beach Unified School District, which is one of the school-district defendants; JAMES M. RIEWER, Superintendent of South Bay Union High School District, which is one of the school-district defendants; LOWELL JACKSON, Superintendent of Centinela Union High School District; MADELINE HUNTER, Principal of the Laboratory or Experimental School of the University of California at Los Angeles; DAVID

R. DOERR, Chief Consultant to the California Assembly's Committee on Revenue and Taxation; WILLIAM T. BAGLEY, Member of the California Assembly and former Chairman of the Assembly's Revenue and Taxation Committee; ERNEST A. STACHOWSKI, Coordinator of Professional Development of Long Beach Unified School District; LEONARD L. JENSEN, Director of Evaluation, Research and Planning of the Wayne-Westland Community Schools, Wayne and Westland, Michigan; DAVID J. ARMOR, Associate Professor of Sociology of Harvard University; JAMES N. FOX, an educational data analyst; EDGAR C. EGLY, Assistant Superintendent for Business of Burbank Unified School District; ERIC A. HANUSHEK, Associate Professor at the United States Air Force Academy; WILLIAM H. BARBOUR, JR., Controller of the Los Angeles Unified School District; ERICK L. LINDMAN, Professor in the Graduate School of Education of the University of California at Los Angeles; JAMES W. GUTHRIE, Professor in the Department of Education of the University of California, Berkeley; DONALD R. WINKLER, Associate Professor in the Department of Economics and the School of Education of the University of California, Santa Barbara; STEPHEN KLEIN, Psychologist and Associate Professor at the University of California, Los Angeles; ALEXANDER I. LAW, Chief of the Office of Program Evaluation and Research of the Department of Education of the State of California; NATHANIEL GAGE, Professor of Education and Psychology, Stanford University; SIDNEY A. THOMPSON, Principal of Crenshaw High School of the Los Angeles Unified School District; JOSEPH M. RITZEN, Lecturer in education, School of Education of the

University of California, Berkeley; ALFRED S. MOORE, Principal of the Hooper Avenue Elementary School of the Los Angeles Unified School District; STEPHEN M. RHOADS, Consultant for the Oakland Public Schools; and ROBERT A. SMITH, Associate Professor, School of Education of the University of Southern California.

In addition, the parties stipulated that a number of other named school-district superintendents, if called to testify, would testify substantially as did certain specified school-district superintendents who were called as witnesses.

All witnesses agree that the new foundation program levels for 1973-74 of $765 per pupil for elementary school children, $950 per pupil for secondary school children and approximately $842 per pupil for children in unified school districts constitute a substantial increase over the pre-SB 90 and AB 1267 foundation program levels. This will result in a change in the relative proportions of school revenues derived from local property taxes and revenues derived from general resources of the State. Thus, under the pre-SB 90 and AB 1267 financing system, the State's portion of total school expenditures amounted to approximately 30 to 33 percent in 1972-73, with the local school districts' share from real property taxes amounting approximately 60 percent. In the fiscal year 1973-74, the first year of operation under SB 90 and AB 1267, the State's contribution to total school revenues will amount to approximately 42 to 44 percent, and the local share will decrease to approximately 50 percent, with the balance being provided by federal and miscellaneous sources. Under SB 90 and AB 1267, additional money in the amount of the several hundred

million dollars is being provided by the State from general funds to finance public education.

Defendants make the contention that under SB 90 and AB 1267, the substantial increases in the foundation levels of expenditures for low-wealth districts constitute enough money to provide the elementary, and high school students in low-wealth districts with an "*adequate*" education. Plaintiffs, however, argue that the new foundation levels provided by SB 90 and AB 1267 do not constitute a level of support sufficient to produce an "adequate" educational program in the low-wealth districts.

Witnesses produced by plaintiffs and defendants gave conflicting testimony as to what minimum amount of expenditure per pupil in a school district is required to provide an "adequate" education to the children of any school district. Thus, witnesses for plaintiffs, such as the superintendents of low-wealth school districts, expressed opinions that the SB 90 and AB 1267 foundation program expenditure levels were inadequate and that a minimum level of expenditure ranging from $1,100 to $1,600 per pupil is required to provide an adequate-quality educational program in any school district. This same view was expressed by Richard M. Clowes, Los Angeles County Superintendent of Schools, Wilson C. Riles, State Superintendent of Public Instruction, and Edwin H. Harper, State Deputy Superintendent of Public Instruction.

This contention of defendants introduces the issue of whether the constitutional principle of equal protection of the laws is satisfied so long as the State's financing system for public education guarantees to every pupil in the State in public schools an "adequate"

educational program. Is it sufficient, however, that an *adequate* education is provided by the financing system for some students if the system provides other students with a high-quality or superior-quality educational program or opportunity? Can it be held that a State financing system which provides an *adequate* educational opportunity for some children, while providing a *much higher* educational opportunity for others, complies with the *Serrano* court's call for a statewide "uniformity of treatment" of pupils?

This adequacy-of-education contention of defendants seems to find support in the approach of the majority of the United States Supreme Court in *Rodriguez*. The *Rodriguez* majority seemed to say that the Texas foundation program of public school financing was constitutionally permissible because it provided an adequate minimum educational offering in every school in the state and, hence, assured every child a *basic* education. But Mr. Justice Marshall, in his *Rodriguez* dissent, described this approach as novel because, although the principle of equal protection of the laws does not require "precise" equality in the treatment of all persons, it had never before been suggested that because some "adequate" level of benefits is provided to all, discrimination in the provision of services is therefore constitutionally excusable. Mr. Justice Marshall took the view that the constitutional requirement of equal protection of the laws is not addressed to minimal sufficiency but rather to unjustifiable inequalities of a State's action.

The "*quality*" of an educational program must be viewed as a reference to the degree of excellence of the program. An adequate educational program is

certainly not synonymous with a high-quality program. At best, it can mean a program that is barely sufficient or no more than satisfactory. When we speak in terms of the quality of any product, a product described as adequate certainly signifies a low-quality product, as contrasted with a product of high quality. The very fact that there is a wide divergence of opinion among educators and related experts as to what amount of expenditure per pupil makes for an "adequate" education is itself a good reason for rejection of the concept that adequacy of expenditures per pupil satisfies the constitutional mandate of equal protection of the laws.

Furthermore, irrespective of the view of the *Rodriguez* majority regarding the meaning of the United States Constitution, this dispute between the plaintiffs and defendants with respect to whether California's public school financing system under SB 90 and AB 1267 provides an adequate educational program to the children of the State or an inadequate educational program, seems to this trial court to raise an irrelevant issue in view of the *Serrano* opinion. The *Serrano* court did not take a position that there was a constitutional requirement for the State to provide any particular level of support for public education. The *Serrano* court did not impose any requirement that it is constitutionally required that the State provide enough money for the public schools to assure that every child attending public school in the State receives either an adequate or low-quality educational program or a high-quality educational program.

What the *Serrano* court imposed as a California constitutional requirement is that there must be uniformity of treatment between the children of the various school districts in the State because all the children

of the State in public schools are persons similarly circumscribed. The equal-protection-of-the-laws provisions of the California Constitution mandates nothing less than that all such persons shall be treated alike. If such uniformity of treatment were to result in all children being provided a low-quality educational program, or even a clearly *inadequate* educational program, the California Constitution would be satisfied. This court does not read the *Serrano* opinion as requiring that there is any constitutional mandate for the State to provide funds for each child in the State at some magic level to produce either an adequate-quality educational program or a high-quality educational program. It is only a disparity in treatment between equals which runs afoul of the California constitutional mandate of equal protection of the laws.

This court is convinced that there is no way that the *Serrano* opinion can be interpreted as holding that the constitutional rights of plaintiffs would be satisfied as long as the financing system insured that no child in public school in California would be afforded less than an adequate education, and that, in such a case, it would be immaterial that the financing system provided a high-quality or superior-quality educational program to other children. It is this trial court's determination, therefore, that the contentions between the parties and the conflict in the evidence as to whether the foundation financing program under SB 90 and AB 1267 is adequate or inadequate to provide a certain quality of educational program or opportunity to every child attending public school in the State do not tend to prove or disprove any constitutional issue presented in this case at bench.

If, under the operation of SB 90 and AB 1267, a child in a low-wealth school district is now provided an adequate or fair-quality education but a child in a high-wealth school district is provided a high-quality education as a result of disparities in revenues and expenditures due to disparities in assessed valuations of property between the two school districts, it follows that the State has denied equal protection of the laws under the California Constitution to those children who are being afforded only the adequate education. Providing an adequate-quality education to some children but providing a high-quality or superior-quality education to others is not that state-wide uniformity of educational opportunity decreed by the California Surpeme Court in its *Serrano* opinion.

It must be made clear that the *Serrano* court did not decree a downgrading of educational programs in the high-wealth districts so that all children in the public schools of the State would receive only an adequate-quality education instead of a high-quality education. All parties agree that an equal expenditure level per pupil throughout the State is not educationally sound or desirable, and is not mandated by any California constitutional provision. Any doctrine of exactly equal expenditures per pupil throughout the State would ignore the generally accepted view that educational expenditures must be predicated, in significant part, upon the varying needs of students. A doctrine of precisely equal expenditures per pupil would assume that every child has the same educational needs. Such an assumption is contrary to the demonstrable fact that the educational needs of children will vary within a single school district and between school districts. There can be no dispute regarding the view that it

will take more money for some children to achieve a good education than it will take for others. The categorical-aids segment of the State's financing system constitutes a recognition of this accepted fact. Thus, in addition to the expenditure amount required for a regular pupil in a regular class, a physical handicapped or mentally handicapped pupil, or disadvantaged pupil may well need an additional $1,000 or more to be spent on his education.

We now turn to a consideration of whether the changes made by SB 90 and AB 1267 in the State's public education financing system have eliminated the unconstitutional features of the pre-SB 90 and AB 1267 system that was before the *Serrano* court. It is abundantly clear that the substantial increases in the equalization-aid segment of the foundation program, considered alone, do not eliminate any unconstitutional features.

SB 90 and AB 1267 made no changes in school-district boundaries. The evidence indicates that there are 1,067 school districts in the State. However, this has not always been the number of districts. There were approximately 3,000 school districts in the State at one time. Of the present number of 1,067 school districts, it is to be noted that 180 are school districts that have less than 100 children. With no changes in the number or school-district boundaries, SB 90 and AB 1267 leave intact the disparities between school districts in assessed valuations of property or taxable wealth.

SB 90 and AB 1267 also made no change in the basic-aid segment of the foundation program. Hence, the high-wealth, basic-aid school districts continue to receive the yearly basic-aid amount of $125 per pupil.

Since SB 90 and AB 1267 made no changes in the number of school districts or in the geographical boundaries of the State's school districts, we must look to other features of the SB 90 and AB 1267 legislation to determine whether such other features have nullified the disparities in school revenues and expenditures per pupil between school districts which would otherwise result from tax rates being applied to widely varying assessed valuations of property between school districts.

One significant feature of the SB 90 nd AB 1267 legislation was the imposition of revenue controls or limitations on all school districts. By restricting school districts in the amounts of revenue that could be raised by the levy of property taxes each year beginning with 1973-74, limits on school expenditures were indirectly imposed and restricted to the maximum amounts of revenues that the school districts were permitted to raise. Under SB 90 and AB 1267, each school district starts with a formula which uses as a base the 1972-73 revenues per pupil of that district. The 1973-74 revenues and expenditures are limited to a specified increase over the 1972-73 revenues. For the high-spending school districts, which are practically but not totally synnoymous with the high-wealth school districts, the increase is limited to a percentage of a dollar amount per pupil which is considered to be an inflation factor, calculated to be between 5 and 6 percent.

For the low-spending districts in 1972-73, which are also practically but not totally synonymous with low-wealth school districts, their limitation in increased spending was fixed at 15 percent over the 1972-73 expenditure or revenue amount per pupil. The reason low-spending and high-spending school districts are not totally synonymous with low-wealth and high-wealth

school districts, respectively, is that a few medium or high-wealth school districts have historically limited their expenditures per pupil to an amount below the foundation amount, although not required to do so by any lack of revenue capacity.

For the first year of operation of SB 90 and AB 1267 in 1973-74, it is abundantly clear that there are substantial disparities in per-pupil expenditures between school districts, just as there were such substantial disparities prior to the SB 90 and AB 1267 legislation, except for the increases in the equalization aid levels to the $765 and $950 amounts for elementary and secondary pupils, respectively. By starting with each school district's 1972-73 revenue and expenditure level, SB 90 and AB 1267 simply *readopted* as a starting point the public school financing system which the *Serrano* court held to be in violation of the equal-protection-of-the-laws provisions of the California Constitution. This conclusion is inescapable because no changes were made in the number of school districts or in the geographical boundaries of the 1,067 school districts, and the 1972-73 disparities in per-pupil school revenues and expenditures between school districts are, just as in prior years, the result of the significant variations in assessed valuations of property between school districts and hence in school-district wealth between school districts.

For the first year, 1973-74, under SB 90 and AB 1267, the language of *Serrano* is still applicable: "The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property

is to make the quality of a child's education dependent upon the location of private commercial and industrial establishments. Surely, this is to rely on the most irrelevant of factors as the basis for educational financing." (*Serrano, supra,* 5 Cal.3d 584, 601, 96 Cal.Rptr. 601.)

The *Serrano* court emphasized the contrast between the affluent school district and a poor school district and the ability of the former to provide a high-quality education for its children at a low tax rate by setting forth a comparison of selective school districts by counties for the year 1968-69. Thus, the *Serrano* court points out that, in Alameda County, the Emery Unified School District with an enrollment of 586 pupils was able to spend $2,223 per pupil with a tax rate of $2.57 per $100 of assessed valuation, while Newark Unified School District with 8,638 pupils was able to spend only $616 per pupil with a tax rate of $5.65, a tax rate which was more than double that of the Emery School District. This differential in tax rate and expenditure per pupil between these two school districts in the same county is explained by the fact that the Emery School District had an assessed valuation of property of $100,187 per pupil, while the Newark School District had an assessed valuation of property of only $6,048 per pupil.

In the same year, 1968-69, in Fresno County, Coalinga Unified School District, with 2,640 pupils, was able to spend $963 per pupil with a tax rate of $2.17, while Clovis Unified School District could only spend $565 per pupil with a tax rate of $4.28. Again, the differential tax rate and expenditure per pupil between Clovis and Coalinga resulted from the fact that the Coalinga School District had an assessed valuation

of $33,244 per pupil, while Clovis School District had an assessed valuation of only $6,480 per pupil.

In Kern County, in 1968-69, Rio Bravo Elementary School District, with only 121 pupils, was able to spend $1,545 per pupil with a tax rate of only $1.05, while Lamont Elementary School District, with 1,847 pupils, was able to spend only $533 per pupil with a tax rate of $3.06 because Rio Bravo School District had an assessed valuation of $136,271 per pupil, while Lamont School District had an assessed valuation of only $5,971 per pupil.

Finally, in Los Angeles County, in 1968-69, Beverly Hills Unified School District, with 5,542 pupils, was able to spend $1,232 per pupil with a tax rate of only $2.38, while the Baldwin Park Unified School District, with 13,108 pupils, was able to spend only $577 per pupil with a tax rate of $5.48. Again, this differential in tax rate and level of expenditures between the two school districts was all made possible by virtue of the fact that Beverly Hills School District had an assessed valuation of $50,885 per pupil, while Baldwin Park School District had an assessed valuation of only $3,706 per pupil.

No evidence has been presented to this trial court which would indicate that in 1972-73, the base year used by SB 90 and AB 1267 for the application of the new formula, there were any significant changes in the *disparities* per pupil in spending and assessed valuations of property between school districts as set forth by the *Serrano* court for the year 1968-69.

For the year 1973-74, because of the greater limitations on revenue production for the high-wealth school districts than for the low-wealth school districts, the

latter school districts make an *insignificant* gain in lessening the wide disparities in expenditure levels between the low-wealth school districts and the high-wealth school districts. In 1973-74, for example, a school district that was spending below the foundational levels in 1972-73, the base year, does not automatically move to the foundation levels of $765 per pupil for elementary pupils and $950 per pupil for high school pupils because of the revenue limit which permits only a 15 percent increase over the 1972-73 revenue per pupil. Thus, if the revenue spent in 1972-73 by a school district was $600 per pupil, this district may spend only $690 per pupil in 1973-74.

Furthermore, the high-wealth or basic-aid school districts continue to receive under SB 90 and AB 1267 the basic-aid grant from the State of $125 per pupil, just as such school districts automatically received this amount under the pre-SB 90 and AB 1267 financing system. Again, the language of the *Serrano* court with respect to basic aid is equally applicable to the 1973-74 year under SB 90 and AB 1267. The *Serrano* court spoke in these terms:

"Furthermore, basic aid, which constitutes about half of the state educational funds (citation omitted), actually widens the gap between rich and poor districts. (citation omitted.) Such aid is distributed on a uniform per pupil basis to all districts, irrespective of a district's wealth. Beverly Hills, as well as Baldwin Park, receives $125 from the state for each of its students.

"For Baldwin Park the basic grant is essentially meaningless. Under the foundation program the state must make up the difference between $355 per elementary child and $47.91, the amount of revenue

per child which Baldwin Park could raise by levying a tax of $1 per $100 of assessed valuation. Although under present law, that difference is composed partly of basic aid and partly of equalization aid, if the basic aid grant did not exist, the district would still receive the same amount of state aid—all in equalizing funds.

"For Beverly Hills, however, the $125 flat grant has real financial significance. Since a tax rate of $1 per $100 there would produce $870 per elementary student, Beverly Hills is far too rich to qualify for equalizing aid. Nevertheless, it still receives $125 per child from the state, thus enlarging the economic chasm between it and Baldwin Park. (citation omitted.)" (*Serrano, supra,* 5 Cal.3d 584, 594, 96 Cal.Rptr. 601.)

The evidence indicates that school districts that receive basic aid from the State contain about 12 percent of the elementary pupils and about 22 percent of the high school pupils. These percentages constitute about 650,000 children out of a total of approximately 4,500,000 children in the public schools of California.

A few examples will demonstrate that in 1973-74, under SB 90 and AB 1267, there will still exist substantial disparities in spending between school districts. Hyrum W. Loutensock, Superintendent of Lynwood Unified School District, testified that Lynwood is a low-wealth and low-spending school district; that Lynwood's 1972-73 revenue amounted to about $726 per pupil and that the 15 percent limitation on increasing revenues would not quite permit his school district to reach the foundation level of expenditure in 1973-74, which would be approximately $842 per pupil in a unified school district. Jerry Holland, the Super-

intendent of Baldwin Park Unified School District, testified that his district's 1972-73 expenditure per pupil was about $715. Thus, the 15 percent limitation on expenditure increase will not permit this district to reach the foundation level in 1973-74. These expenditure levels are to be compared to those of high-wealth school districts such as Beverly Hills Unified School District which will spend about $1,890 per pupil in 1973-74, and San Marino Unified School District which will spend in excess of $1,100 per pupil in 1973-74, and Burbank Unified School District that had a per-pupil expenditure in 1972-73, the base year, of approximately $1,200. Robert E. Shanks, Superintendent of Burbank Unified School District, testified that Burbank has a high percentage of commercial and industrial property as a part of its tax base. Burbank's total assessed valuation was estimated to be 384 million dollars for its 14,000 students.

It is significant that Edwin H. Harper, California's Deputy Superintendent of Public Instruction for Administration, estimated that under the SB 90 and AB 1267 legislation, the variations in per-pupil expenditures between school districts at the extremes reach a ratio of 4 to 1. If the high-wealth school districts are able to spend from *two* to *four* times as much per pupil as low-wealth school districts, there can be no conclusion other than that, during the first year's operation of SB 90 and AB 1267 in 1973-74, substantial disparities continue to exist in the expenditures per pupil between school districts as a result of the fortuitous circumstances of the geographical boundaries of school districts and the chance location of far more taxable wealth in some school districts than in others. Certainly, then, under the first year's operation of SB 90 and

AB 1267, is in full compliance with the equal-protection-does *not* comply with the *Serrano* court's call for equality and uniformity of treatment for *all* the school children of the State of California.

We move next to a consideration of whether the operation of SB 90 and AB 1267 in the years following 1973-74 will bring the school financing system into compliance with the equal-protection-of-the-laws provisions of the California Constitution. It is the position of the defendants that the features of SB 90 and AB 1267 which provide for yearly increases in the foundation program levels of per-pupil aid to low-wealth school districts, and the revenue limits control on expenditures of all school districts, will gradually reduce per-pupil expenditure variations between school districts to insignificant amounts. Hence, the State's school financing system, as amended by SB 90 and AB 1267, is in full compliance with the equal-protection of-the-laws requirement of the California Constitution.

Witnesses have testified that the SB 90 and AB 1267 legislation has a tendency to gradually squeeze the per-pupil expenditures of the high-spending school districts toward the per-pupil expenditures of the advancing foundation program levels of the low-wealth districts. This equalizing tendency results from certain facts and assumptions involved in the SB 90 and AB 1267 legislation. The high-spending school districts are limited to increasing their per-pupil expenditures each year to a percentage over the previous year's expenditure calculated at varying amounts less than the yearly inflation growth factor which is set forth in the legislation at between 5 and 6 percent. This limitation on school-district expenditure growth is to be contrasted with the fact that prior to SB 90 and

AB 1267, the high-spending school districts were actually increasing their per-pupil revenues and expenditures at a yearly average of approximately 8 percent.

Under SB 90 and AB 1267, the foundation program levels go up each year by the average statewide yearly growth in assessed valuations of property. Historically, there has been an annual average statewide growth in assessed values of property of approximately 7 percent.

With the low-wealth school districts able to increase their per-pupil expenditures at an annual rate of approximately 7 percent because of this annual growth rate in assessed valuations of property, the foundation program level of expenditure per pupil rises faster than the per-pupil expenditure level of the high-wealth school districts which is limited to varying amounts that may be considerably less than 5 percent yearly. These two features of SB 90 and AB 1267 produce the squeeze factor to gradually reduce the expenditure disparities between the high-wealth and the low-wealth school districts. Of course, if the assessed valuations growth rate becomes less than the 7 percent assumed, the expenditure equalization process will take much longer than the experts have estimated.

The expert witnesses have given various estimates as to the time limit required for the equalization-in-expenditures process to completely run its course and produce, for all practical purposes, equalized spending between all school districts of the State. One opinion expressed is that about 80 percent of the student population of California will be in school districts with equalized expenditures within 10 to 14 years, and that, for all practical purposes, there will be total

equalized spending after 20 years of operation under SB 90 and AB 1267.

All of the estimates as to the length of time required to produce partial and, finally, complete spending equality between school districts assume that the high-wealth school districts will not, through their residents, exercise their absolute right under SB 90 and AB 1267 to vote tax overrides to increase their revenues and expenditure capabilities above the levels established by the revenue limits controls.

What is the situation with respect to reduction of expenditure disparities between school districts after *five* years of functioning under SB 90 and AB 1267? No evidence has been produced to indicate that any significant dent will have been made in the disparities in per-pupil expenditures between school districts during the *first five* years of operation under SB 90 and AB 1267. One example will suffice to demonstrate this lack of accomplishment. Thus, it is estimated that in 1977-78 Baldwin Park Unified School District will have increased its per-pupil expenditure over 1972-73 by $342 to reach an expenditure per pupil of approximately *$1,043* with a permitted tax rate of about $3.11 per $100 of assessed value. In 1977-78, it is estimated that Beverly Hills Unified School District will have increased its per-pupil expenditure over 1972-73 by only $125, which will produce an expenditure per pupil of approximately *$2,015* with a permitted tax rate of about $2.66 per $100 of assessed value. The Baldwin Park-Beverly Hills per-pupil expenditure differential in 1977-78 will thus be approximately $972.

The evidence is undisputed that, even after five years of projected experience under SB 90 and AB

1267, many high-spending and high-wealth school districts will still be spending for the education of the children in these districts *two* to *three* times more per pupil than many low-wealth school districts will be able to spend per pupil for the education of their children. That such differentials in per pupil spending constitute *substantial* and *significant* disparities is not reasonably subject to dispute. It follows, also, that the continued significant disparities in per-pupil expenditures that will exist between school districts, even after five years of projected experience under SB 90 and AB 1267, will still be the result of the fortuitous factors criticized in *Serrano*—the factors of the geographical boundaries of school districts and the chance location of taxable valuable industrial and commercial properties located in some school districts but not in others. At best, it may be concluded that SB 90 and AB 1267 will narrow or diminish the pre-existing disparities in expenditures between school districts, but will still leave disparities in per-pupil expenditures between school districts that are substantial and significant because SB 90 and AB 1267 have continued the tax-base factor as the determinant of a school district's ability to raise money for its educational needs.

But even the squeeze-factor accomplishments under SB 90 and AB 1267 of causing some diminution in the disparity spreads of expenditures between school districts must be examined in the light of the tax provisions of this legislation. The revenue-limits control feature over revenues and expenditures of all school districts will result in a rollback of previous tax rates since no higher tax rate may be imposed by a school district than that required to raise the amount of revenue permitted that school district for the particular year involved.

However, the limitation on maximum tax rates applies only to tax rates which may be imposed by the taxing authorities *without* voter approval. SB 90 and AB 1267 continue provisions of the pre-SB 90 and AB 1267 public school financial system which permit a levy of taxes in a school district above the revenue-limits maximum rate upon a vote of the electors of the school district. This aspect of the financing system is generally known as the voted-override aspect of the system. In continuing the voted-override provision of the pre-SB 90 and AB 1267 public school financing system, the question is raised of whether, in so doing, the system will permit a continuation of the same spread of expenditure disparities between school districts that existed before the imposition of revenue controls.

Certainly there can be no refutation to the conclusion that the increase in equalization aid and the imposition of revenue limits contained in SB 90 and AB 1267 to preclude any further widening of the gap between interdistrict spending and to narrow the present gap can all be nullified if the electors of school districts vote tax overrides. The voting of overrides can, and will, produce the same disparities in revenues and expenditures between school districts that existed in the pre-SB 90 and AB 1267 financing system since even a slight tax rate increase in a school district with a relatively high assessed valuation per pupil will raise substantial revenues, while the same slight tax rate increase in a school district with a relatively low assessed valuation per pupil will raise relatively little additional revenue.

The *Serrano* court points out this result in comparing Baldwin Park and Beverly Hills by stating that Bald-

win Park could only raise $47.91 of revenue per elementary child by levying a tax of $1.00 per $100 of assessed valuation, while Beverly Hills would raise $870 per elementary child from the levy of a tax rate of $1.00 per $100 of assessed valuation. There is no provision in SB 90 and AB 1267 to preclude the voters of Beverly Hills Unified School District or of other high-wealth school districts, from voting tax overrides and maintaining, or even increasing, the differential spending level now existing between high-wealth and low-wealth school districts.

Defendants refer to the fact that Superintendents Holland and Loutensock of the Baldwin Park and Lynwood School Districts, respectively, testified concerning their hestitancy to recommend tax override elections because of the tax rate reductions which will be produced in their districts by SB 90 and AB 1267. Defendants draw inferences from such testimony that in Baldwin Park and Lynwood the citizens and parents may not desire, and the pupils of those districts may not need or require, an educational expenditure level comparable to that existing in Beverly Hills or other high-wealth and high-spending school districts in the State. To draw such conclusions from this testimony is wholly illogical and specious. The logical and reasonable inferences to be drawn from such testimony are that the parents and residents of low-wealth school districts cannot, and should not, be expected to tax themselves at higher rates than the rate of taxpayers of high-wealth school districts in order to produce gross revenues that are far less than the revenues produced by high-wealth and high-spending school districts at lower tax rates.

No evidence has been introduced in the case at bench that would justify a conclusion that parents of pupils in low-wealth and low-spending districts have no desire for a high-quality education for their children, or that the children in such school districts have no need for a high-quality education. Even on an assumption that the pupils and parents in the low-wealth school districts aim for vocational and terminal career-educational objectives more than for college preparation, it is established by the evidence in this case that a high-qaulity vocational or industrial arts program may require even a higher level of revenues and expenditures than a comparable college preparatory program. Although there is no evidence one way or the other on the point, it would seem reasonable to conclude that if, in fact, the pupils and parents in low-wealth and low-spending school districts do not desire college preparatory programs for the children of such districts, the reason is more likely to be that such a difference in educational objectives flows more from the factor of the low-wealth and low-spending ability of such school districts, rather than from an uninhibited choice of educational objectives.

Although there can be no sure prediction of when and if certain school districts will exercise their voted-override tax option, incentives are present for the high-wealth school districts to do so. Under SB 90 and AB 1267, tax rates have been rolled back because of the revenue limits controls. In view of the historical annual increase of approximately 8 percent in school expenditures and the *less than* 5 percent yearly inflation-factor expenditure increase permitted to the high-wealth and high-spending school districts, such districts will find it impossible to maintain their present high-qualty

programs at spending levels substantially below their accustomed yearly increase in expenditures. Increased revenues in these school districts may be obtained through voted tax overrides at rates which will simply raise their tax rates to no more than the pre-rollback rates in existence under the pre-SB 90 and AB 1267 school financing system.

It is clear, therefore, that as long as the voted tax overrides are available to the voters of school districts, there is substantial probability that, under SB 90 and AB 1267, the present substantial disparities in per-pupil expenditures between school districts will never be diminished to any significant extent. Any assumption that the voters in high-wealth or high-spending school districts will *not* vote tax overrides under SB 90 and AB 1267 cannot be supported by either logic or reason.

Much of the evidence introduced in this case is directed to the question of the relationship between the per-pupil expenditure of a school district and the quality of the educational program being provided by that school district. Defendants assert that the quality of education provided to pupils of a school district is not significantly affected by any increase in the per-pupil expenditure but by the employment of other means. Thus, Lowell Jackson, Superintendent of Centinela Valley Union High School District, testified for defendants that career education was a major objective of his district, and that the district was able to change the emphasis of its educational program to emphasize vocational training of students with an opportunity for outside work experience, without any increase of expense.

One segment of defendants' evidence was directed to the proposition that the quality of a child's education was primarily dependent upon effective teaching or instruction, and that, through in-service training and other training techniques, the effectiveness of teachers on pupil learning could be greatly improved. Madeline Hunter, Principal of the Laboratory or Experiemental School of the University of California at Los Angeles, testified that if teachers in any school district, low spending or high spending, were taught to use, and would use, team teaching, individualized teaching, and the diagnostic and prescriptive teaching approach, the quality of education in such district would be materially improved. This approach is that of first diagnosing what students have already learned on an individual basis, and then prescribing the necessary teaching to proceed from that point. This approach means that not all students in a class are taught the same thing at the same time.

Similar to Madeline Hunter's testimony was that given by William O. Wright, Superintendent of the Long Beach Unified School District, and by Ernest A. Stachowski, Coordinator of Staff Development of the Long Beach District. They gave opinion testimony that the dollar amount per pupil spent by a school district was not the important factor in improving the quality of education; that training teachers to be effective teachers was the important consideration, and that the better teachers are those trained in the methods of diagnostic and prescriptive teaching. Dale M. Harter, Superintendent of El Segundo Unified School District, also testified that the most important element that effects the quality of education is that of effective teachers, and that there is no direct relationship between

the amount of dollars spent by a school district and the quality of the educational program in that district.

The inference suggested by this evidence as to the great value of retraining teachers in team teaching, individualized instruction, and in the diagnostic and prescriptive teaching approach is that most of the certificated teachers in the State would be on the same level of teacher competence if they are retaught and trained in the diagnostic-prescriptive method of teaching. Hence, a low-wealth school district that has a low salary level for its teachers ought to be able to turn its teachers into effective teachers equal to those of a high-wealth district that has a much higher salary level for its teachers, by simply retraining them to use the diagnostic-prescriptive teaching method, and that this can be accomplished without great expense. To rebut this analysis and conclusion, plaintiffs produced testimony from Donald R. Winkler, Assistant Professor in the Department of Economics and in the School of Education at the University of California, Santa Barbara, and from Nathaniel Gage, Professor of Education and Psychology at Stanford University.

Winkler testified that he had a study of the Richmond School District to determine the effects on pupil achievement of different factors of school resources. One conclusion of significance was that the B.A. Bachelor of Arts) quality of teachers had a consistently important effect on pupil achievement. It was also his conclusion that the teachers with Bachelor of Arts degrees from good schools tended to have the verbal abilities which would make for pupil achievement, but that such teachers are attracted to school districts that pay the highest salaries. It was his opinion, therefore, that a low-wealth school district was at a disadvantage in bidding for the high-quality teachers.

Gage testified that he considered individualized instruction as the best method of teaching and that it is best accomplished through the diagnostic and prescriptive techniques. He agreed that through in-service training, improvement can be made in a teacher's behavior factors and skills in teaching which will improve pupil achievement and the quality of education. Gage described the development and use of an in-service training program consisting of microteaching and minicourses. It was Gage's opinion that this kind of teacher training will cost money but is necessary if a school district is to improve the teaching skills of its teachers. Gage also testified that individualized instruction, which requires more attention by a teacher to individual pupils, necessitates more teacher aides, more instructional materials such as films and reading materials, and more planning time by teachers, cannot be produced without considerable financial cost to a school district. The evidence amply demonstrates that team teaching, individualized instruction, diagnostic and prescriptive teaching techniques are important ingredients in a high-quality educational program of a school district. But the evidence also convinces this trial court that this kind of high-quality teaching and high-quality teachers cannot be secured or maintained by low-wealth school districts without incurring the expense of a teachers' salary level comparable to the teachers' salary levels of high-wealth school districts.

But the major contention of defendants relating to the question of whether the level of expenditures per pupil in a school district affects the quality of the education provided the pupils in such district is that this issue must be established by plaintiffs *solely* by way of evidence of pupil achievement scores on the

statewide standardized achievement tests. These tests are primarily reading, mathematics, language and spelling tests administered to all public school pupils at various grade levels. This contention of defendants raises the following questions: Must it be demonstrated that an increase in school expenditures in a school district will result in increased pupil achievement in the achievement tests by some designated percentage in order for plaintiffs to establish that there is a meaningful relationship between the level of expenditures and a high-quality education? Are pupil-achievement scores on the standardized tests a valid measure of whether a school district's per-pupil expenditure level determines whether such district is providing its pupils a low-quality or a high-quality educational program?

Defendants urge the adoption by this court of the principle that plaintiffs can prove the truth of the allegations of their complaint *only* by proving that *significant* and *consistently* demonstrable effects on the quality of a child's education flow from a school district's per-pupil expenditure amounts, as measured by pupil performance on the statewide standardized achievement tests.

On this issue of whether school expenditures have an effect, and if so, to what extent, on pupil achievement, as measured by test-score results on the standardized achievement tests, both plaintiffs and defendants have relied upon the opinion testimony of experts in the field of applying statistical principles to educational research. Therefore, a brief description of basic statistical principles is in order. Statistics may be defined as a method of collecting and analyzing data and interpreting data. The method used is that of determining the *correlation* between two or more *variables.* A variable may be defined as a factor or characteristic that manifests differences in magnitude or quantity. In the case at bench, one variable with which we are concerned is the per-pupil expenditure amount of each of the various school districts of the State. The second variable of concern is that of the school-district average test-score results of the various districts in the standardized achivement tests such as third grade reading and sixth grade mathematics of these same districts.

By correlation is meant, basically, the measure of agreement or relationship between two or more variables. Thus, high grades in English tend to be associated with high grades in foreign languages. Both of these tend to be associated with high scores on intelligence tests. In many situations, we find that two variables are related to each other because they are both related to, or caused by, a third variable. Statisticians, however, are careful to point out that these relationships do not imply that one is the cause of the other. This may or may not be true. Thus, statistical studies reveal that the more educated the married couple, the less likely they are apt to seek a dissolution of their marriage. But one cannot conclude that "education" *causes* fewer marriage dissolutions. There are other factors which enter into the picture such as the accompanying factors of later age of marriage, money, and a wide availability of partners.

The statistics of the relationship between one variable and another are called correlation coefficients. Of the various correlation coefficients in use, the one most frequently encountered and used is called the Pearson product-moment correlation coefficient. The

determination of the correlation coefficient is made through the use of a statistical formula.

The size of the Pearson product-moment correlation coefficient varies from plus 1 through zero (0) to minus 1. Most correlation coefficients tell us two things. First, we have an indication of the magnitude of the relationship. It is worth noting, for example, that a correlation of —.88 is the same size as one of +.88. The plus or minus sign has nothing to do with the size of the relationship, but it gives information about the direction of the relationship. When two variables are positively related, as one increases, the other also increases. Intelligence test scores, for example, are positively related to academic grades. In general, the higher the intelligence test scores, the higher the grades received in school. Other variables are inversely related. By this we mean that as one increases, the other decreases. An example is the relationship between the speed of an automobile and the number of miles obtained per gallon of gas. The faster one drives, the worse the gasoline mileage.

The absence of a relationship between two variables is denoted by a correlation coefficient of .0 or thereabouts. A perfect positive correlation between two variables would be denoted by a correlation coefficient of +1. To obtain a perfect correlation coefficient of +1 between two variables, it would mean that for every increase of a particular amount in one variable, there would be a corresponding increase of a particular amount in the second variable. But there is seldom such a perfect correlation between two variables. If a correlation coeffcient reaches a figure such as .87, it would indicate an extremely high, positive relationship between two variables.

There is some dispute among statisticians and statistical research experts with respect to interpreting the significance of the magnitude of correlation coefficients. Thus, a correlation coefficient of .1 to .3 would be considered of low magnitude by some researchers and statisticians but insignificant by others. A correlation coefficient of .4 to .6 would be considered of moderate magnitude by some statistical researchers but of substantial magnitude by others.

In the field of statistics, there exists also an element known as a coefficient of determination. This is obtained by squaring the correlation coefficient. A percentage figure is obtained, such as 12 percent, for example. The coefficient of determination indicates the percentage of variation in the results of one variable that is accounted for by the other variable.

Practically all educators and education researchers agree that a large number of factors or variables may have some effect upon pupil test scores in the standardized achievement tests. Some of the more commonly mentioned variables are poverty, intelligence quotients of pupils, pupil family backgrounds such as the education, income and occupations of parents, salaries of teachers, teacher-pupil ratios, adult-pupil ratios and pupil peer relationships.

One of the expert witnesses called by defendants was Leonard L. Jensen, Director of Evaluation, Research and Planning for Wayne-Westland Community Schools in Michigan. His conclusions were that in considering the relationship between poverty and pupil test scores, the correlation coefficient indicated a moderate relationship of a negative trend—that as poverty in a school district increases, there is a corresponding

decrease in test-score results. In testing for the statistical relationship between a school district's assessed valuation and pupil reading chores, Jensen stated that he found no relationship at all because the correlation coefficient was so low as to be insignificant. In testing for the statistical relationship between school expenditures and mathematic scores and reading scores, his opinion was that there was a slight or extremely low relationship and that there was also a low coefficient of determination which meant that only about 12 percent of the variation in reading scores was accounted for by expenditure variations. Jensen's opinion as to the relationship between poverty and mathematics and reading scores was that the correlation coefficients indicated, moderate, negative relationships.

One of the expert witnesses for defendants was Eric A. Hanushek, an Associate Professor at the United States Air Force Academy and a statistical research expert. He had made a statistical study of third grade students in the Norwalk-La Mirada School District, as well as having engaged in general research on the correlation problem between various factors and pupil test scores on the standardized achievement tests. Hanushek's conclusion was that the verbal or communicative ability of a teacher was the most important factor in producing achievement in pupils. He testified that teachers who scored high on verbal facility tests produced achievement in pupils far better than other teachers.

It was Hanushek's opinion that there is very little relationship between school district per-pupil expenditure levels and pupil test-score results on the standardized achievement tests. In his opinion, other factors

played the significant roles in affecting pupil test-score results. Family factors, such as whether the fathers were blue collar or white collar workers, made a big difference in pupil achievement. Hanushek indicated that if school districts used their revenues to employ teachers with verbal skills that are the effective skills to produce pupil achievement, then a school district's revenues would be important on the pupil-achievement issue. But he concluded that, in practice, high salaries for teachers are not paid by school districts to attract teachers with good verbal skills, but are paid to obtain teachers with advanced degrees and years of teaching experience, and these attributes in teachers have no effect on student achievement in the standardized tests.

Defendants place heavy reliance upon the statistical studies made by the State Department of Education as a part of its statewide testing program mandated by the Education Code. Thus, in the 1970-71 data, the correlation coefficients for the relationship between school district expenditures per pupil and pupil test-score results on the standardized achievement tests for all of the State's school districts ranged between .2 and .3. Defendants point out that such correlation coefficients fall into the "insignificant" or "low" magnitude category and are insufficient to require further study by statisticians to see if there is any cause-and-effect relationship between the two variables. Hence, urge defendants, it must be concluded that there is no causal, substantial or significant relationship between a school district's expenditures per pupil and pupil achievement scores.

Alexander I. Law, Chief of the Office of Program Evaluation of the California State Department of Edu-

cation, testified that the expenditure-per-pupil factor was just one of eleven factors used to determine correlations with pupil performance on the achievement tests. It was Law's opinion that although the correlation coefficients that indicated the relationship between school district expenditures and pupil test scores were of a low magnitude, they indicated a positive relationship and, because of the large number of school districts involved—237 unified school districts and 676 elementary school districts, these low correlation coefficients validly lead to the conclusion that as the variable of district per-pupil expenditure is increased, there is a tendency for the variable, pupil performance on achievement tests, to move upward in the same positive direction.

This witness also expressed the opinion that the statistical analysis problem involved was difficult because of the fact that, since many of the eleven factors or variables are known to have an effect on pupil performance in the achievement tests, there is no iron-clad statistical method by which the effects of the other variables on pupil performance in the achievement tests may be removed or isolated so that the exclusive effect of any one variable on pupil performance can be determined with any degree of precision. He indicated that the two statistical methods commonly used are the stepwise regression analysis and the linear regression analysis.

In the stepwise regression analysis, one variable at a time is fed into the equation to determine its proportionate effect on the variable—pupil performance on the standardized achievement tests. The criticism of this method is that if two or more of the variables

are related and are strong indicators of expected pupil performance, different results are obtained depending on which variable is first used in the equation. Thus, the variables of poverty and racial minority are strong factors in predicting pupil performance on achievement tests. If the vairable of racial minority is fed into the statistical equation first, it will explain most of the variance in pupil test-score results. But if the variable of the index of poverty is fed into the equation first, then it will explain most of the variance in test-score results.

The second common statistical method used in this situation is the linear regression analysis in which all of the variables are placed in the equation at one time instead of one step at a time. The stepwise regression analysis was used by the State Department of Education because this method appeared appropriate in view of the language contained in the Education Code.

Alexander I. Law also testified that he made a statistical anaysis of 50 randomly selected unified school districts of the State from a list of 177 unified school districts that had pupil enrollments of 1,000 to 25,000. This selection eliminated the extremely small enrollment districts as well as the extremely large enrollment districts. The analysis produced a correlation coefficient of .501 for the relationship between expenditures and sixth grade reading scores. This correlation coefficient would be interpreted to mean that there was a *substantial*, positive relationship between the amount of per-pupil expenditure and the pupil test-score results on the sixth grade reading test. In testing for the relationship between the variables of school

district assessed valuation of property and sixth grade reading score, Law indicated that he obtained .319 as the correlation coefficient. This would be interpreted as indicating a low to moderate relationship between a district's assessed valuation of property and a district's pupil test-score results in the sixth grade reading test.

A correlational study was also made by Law of the relationship between per-pupil expenditures and pupil test-score results on the sixth grade reading test for high-poverty school districts and for low-poverty school districts included within the list of unified school districts with enrollments of 1,000 to 25,000 pupils. The correlation coefficients produced were .613 for the low-poverty school districts and .513 for the high-poverty school districts. These two correlation coefficients are also to be interpreted as meaning that there was a low to moderate relationship between a school district's per-pupil expenditure level and the sixth grade reading test results in both the high-poverty and the low-poverty school districts.

Mr. Law further expressed an opinion that the relationship between school-district expenditures and pupil test-score results on the standardized achievement tests should be considered to be of greater significance than that which is indicated by the low magnitude of the .2 to .3 correlation coefficients. One reason given for this opinion was the fact that as controls were applied in the correlational analysis to avoid the effects of the wide variations in pupil enrollments among the school districts, the correlation coefficient advanced to .5; and as the factor of poverty was controlled to eliminate its effect, the relationship between expenditures and pupil achievement produced an even higher correlation coefficient. Another reason advanced by Law for his opinion was that certain studies of compensational educational programs employed a longiutdinal approach which indicated that the chance of success of such programs in improving pupil test-score results was present when a substantial per-pupil outlay of funds was made over and above the normal per-pupil expenditure.

The longitudinal approach in statistical analysis is to be compared with the cross-sectional approach. A cross-sectional study considers the relationship between two variables at a single point in time, while the longitudinal analysis considers the same components of the variables at several different times such as starting with the relationship between expenditures and test-score results of a group of pupils in the third grade, and then comparing the relationship between expenditures and the test-score results of the same group of pupils as they advance to higher grades.

James W. Guthrie, Associate Professor in the Department of Education, University of California, Berkeley, was one of the expert witnesses who testified for plaintiffs. Guthrie testified that he had made correlational studies in Michigan to determine the effects of various factors on the quality of education and that the results of such studies were relevant to California because of the similarity of conditions between the two states. Guthrie agreed with Alexander Law that the statistical analysis found in the publication, "California State Testing Program 1970-71," prepared by the Office of Program Evaluation of the California State Department of Education, and which indicated a correlation

coefficient of .26 for the relationship between school districts' per-pupil expenditures and pupil test-score results on the achievement tests, was important even though the relationship could only be described as of low magnitude. It was Guthrie's opinion that the importance lies in the fact that the relationship shows positive directionality, and consistency in such positive directionality, which leads to the conclusion that dollars make a difference in what pupils learn—that dollars are associated positively with what pupils learn.

It was Guthrie's opinion that to get a more reliable index of the effect of expenditures on pupil achievement than that demonstrated by the cross-sectional studies found in the State's Testing Program, longitudinal studies would be required; that such studies should start with a certain level of expenditures for pupils of a certain grade, and then that level of expenditures would be increased thereafter in such a way that the same students got better teachers and better equipment and other materials. A determination would then be made if the increase in the level of expenditures was accompanied by a rise in pupil achievement.

Guthrie testified that one of his conclusions from his Michigan study was that the SES (socioeconomic status) of a student has a substantial relationship to the quality of school service that such student receives; that a low SES student tends to attend a school where teachers have less experience, the school buildings are older, there is less equipment and materials and a lesser variety of courses offered.

Similarly, in other studies, the statistical analysis indicates that as the index of poverty among students goes up between school districts, the assessed valuation

of property between school districts goes down, producing a *minus* .32 correlation coefficient.

Robert A. Smith, Associate Professor in the School of Education at the University of Southern California, testified for defendants. Smith's testimony was in sharp disagreement with that of Alexander Law. It was Smith's opinion that Law's statistical methods and, hence, his results, in the three studies of 50 randomly selected unified school districts, high-poverty school districts and low-poverty school districts were subject to criticism. In Smith's opinion, the 50 unified districts were not truly randomly selected and the stepwide regression analysis was not a satisfactory method for controlling or eliminating the effects of other variables when you were trying to determine the relationship between two specific variables. Smith advocated a statistical method of using partial correlation coefficients to control or remove the amount of shared variance of poverty and expenditures and poverty and test-score results. This method, claimed Smith, would give the true relationship between per-pupil expenditure and pupil achievement on the standardized tests.

Smith made a statistical analysis of all the unified school districts from which Law's sample of 50 had been taken to determine the relationship between expenditures and pupil achievement in the sixth grade reading tests. He obtained .275 as the correlation coefficient and concluded, therefore, that Law's calculation of .501 as the correlation coefficient ought to be discarded and disregarded.

Smith expressed the opinion that if all school districts were moved up to a maximum expenditure per pupil, the average reading score would be increased

by only one-tenth of a point. In essence, it was Smith's opinion that there is no significant relationship between a school district's per-pupil expenditure and pupil achievement as measured by test-score results on the standardized reading, mathematics, language or other achievement tests.

Even though the evidence presented in the case at bench is highly conflicting on the question of whether the relationship between a school district's expenditure per pupil and pupils' test-score results on the standardized achievement tests is a significant or insignificant relationship, there is uniformity of agreement that a variety of both nonschool and school factors do play a role in affecting pupil achievement on the standardized tests. A description of some of these factors is set forth in the following statement contained in the publication, "California State Testing Program 1970-71," produced by the Office of Program Evaluation of the California State Department of Education: "An analysis of the overall relationship among the factors examined shows that high pupil achievement is correlated with high pupil scholastic ability scores and low rates of family poverty. High achievement scores are also associated with high teachers' salaries, larger districts, *high expenditures per pupil,* high proportions of nonteaching certificated personnel, low percentages of minority group pupils, low rates of staff turnover, small class sizes and low pupil-teacher ratios." (Emphasis added.)

A serious question to be considered is that of the degree of reliability of the statistical research methods that are employed in separating the various factors and reaching accurate conclusions as to the precise

effect of any one factor disassociated from other factors. This court is convinced, from the evidence introduced in this case, that the statistical correlation research methods employed in social science or educational research have not reached that degree of reliability that it can be said with any degree of certainty as to the precise part which the various factors of home, school or genetics play separately upon pupil achievement in the standardized reading, mathematics, language, or other achievement-measurement tests.

But even though the *precise* effect of a school district's per-pupil expenditure level upon pupil achievement in the standardized tests cannot be pinpointed because of the difficulty of disentangling this factor-variable from the effects of other factor-variables such as teachers and other school resources, and the nonschool factor-variables as family backgrounds, community influences, heredity attributes, all of which are interrelated, this court is convinced from the evidence that a school district's per-pupil expenditure level does not play a significant role in determining whether pupils are receiving a low-quality or a high-quality educational program as measured by pupil test-score results on the standardized achievement tests. This court is impressed with the fact that the Office of Program Evaluation of the California State Department of Education has used careful language in concluding from its analysis of pupil test data and other data obtained from the 1,067 school districts of California for 1970-71, that *high pupil achievement* on the standardized tests is correlated with "*high expenditures per pupil,*" as well as with a number of other named factors.

If the defendants' position were to be accepted that the quality of a child's education is to be determined

solely by pupil test-score results, and that a school district's level of per-pupil expenditures has no significant effect on pupil test-score results, it would follow that high-wealth school districts such as Beverly Hills would be able to reduce their per-pupil expenditure level to that of Baldwin Park or any other low-wealth school district without producing any appreciable effect on the quality of the educational programs being offered by such districts. Yet, practically every person who has testified in this trial has stated, without equivocation, that such a reduction could not be made without affecting adversely the quality of the educational program of districts required to make such cuts in expenditures. This was the testimony of superintendents of both high-wealth and low-wealth school districts. If the opinion testimony of Robert A. Smith is to be believed—that the expenditure level of all schools could be moved up to a maximum amount per pupil and the average reading score would remain unchanged for all practical purposes—the reverse would also be true—that the expenditure level of all school districts could be reduced to a minimum amount per pupil without producing any change in the average reading scores. That per-pupil expenditures play no part in pupil achievement on standardized tests is simply not supported by any credible evidence.

Plaintiffs contend that pupil achievement on standardized tests is not an appropriate standard for determining whether a child in one school district is receiving a high-quality education while a child in another school district is receiving a low-quality education. Plaintiffs introduced evidence seeking to establish that pupil performance on the standardized tests is

a clearly inadequate measure of the quality of a school district's educational program.

Stephen Klein, an Associate Professor at the University of California at Los Angeles, testified that he had specialized in the development and analysis of achievement tests. He expressed the opinion that the standardized achievement tests are not designed for measuring and, hence, are not appropriate for measuring the degree of attainment of many of the educational goals of the State as a whole or of individual school districts. Thus, there are no tests which measure in the psychomotor domain—the physical skills and physical abilities of pupils that are important in vocational skills such as automobile mechanics and various shop courses.

Klein also testified that the standardized tests do not measure for progress in the affective domain—a pupil's personality characteristics, interests and attitudes, interpersonal skills and socialization skills. Nor, said Klein, do the tests measure for a pupil's creativity in art and music. It was Klein's opinion that the standardized tests measure less than a majority of the educational goals established by school districts.

It was Klein's opinion that the standardized tests do not even necessarily measure what they are supposed to measure. For example, the reading test may measure *reasoning* ability more than *reading* ability. He also indicated that the tests do not take into account the cultural influences on a child such as the bilingual culture; that the tests are designed to measure the abilities of English-speaking persons only. This means that the tests are culturally biased against the students who have any difficulty with the English language.

When asked to state what implications were involved in comparing the average test scores of one school district with another in which the cultural and ethnic make-up of the residents was different, Klein replied: "I think it is a venture in correlating the mysterious with the unknown."

It was also Klein's opinion that test-score results measure more what the pupils' home characteristics and the pupils' innate abilities bring to bear upon their learning than what the schools are doing; that the method of test construction is such that the tests are more likely to pick up the effects of the total impact upon the pupil of his home, culture, and school than the particular effects of the school alone.

Another defect of the standardized tests, said Klein, is that they will not pick up the effects of the different ways two school districts will spend the same amount of money per pupil. Thus, one school district with a $700 per pupil expenditure will emphasize the teaching of mathematics and reading, while another school district with the same expenditure per pupil will emphasize the teaching of art, music and science. Pupil test-score comparisons between two such school districts, therefore, will have little meaning.

The testimony of Alexander Law, Chief of the Office of Program Evaluation of the State Department of Education, was similar to that of Klein. Thus, Law testified that any of the standardized tests contains a variety of biases—cultural and others; that these biases are directed in favor of a white, middle-class, middle socioeconomic status child, with the consequence that the tests do not take into account the problems of the variety of ethnic minorities that make up signifi-

cant portions of many school districts. It was also the view of Law that because of the great variety of program emphasis among school districts, standardized tests are not adequate as a measure of the effectiveness of a particular school district's per-pupil expenditure on program.

Klein's criticisms of the effectiveness of the standardized tests and his evaluation of their limitations were substantiated by the testimony of other witnesses also. Thus, Lowell Jackson, Superintendent of Centinela Valley Union High School District, testified that his school district had adopted 21 goals for the education of their students and that exactly two-thirds of these goals cannot be measured by the standardized achievement tests.

In view of the several statements of facts which the parties agree are true and are not in dispute, it appears that defendants are in agreement with plaintiffs' position that the standardized pupil-achievement test such as the reading and mathematics tests, do not measure all of the goals of the various school districts' educational programs and do not measure all of the benefits or detriments that a child may receive from his educational experiences. Thus, as a part of this court's pretrial order, the parties agreed to the following matters: That a child's self-concept can be improved by the educational process; that the educational process can reinforce a child's negative self-concept; that schools can, do, and should, play a role in providing a child with acceptable social values and behavior norms; that schools can, do, and should, play a role in equipping children with what it takes to get along in a technological society; that schools

can, do, and should, play a role in making children better future citizens; that many components of a good education are not measured by pupil performance on achievement tests; that many aspects of a student's capabilities and progress are not measured by performance on achievement tests; and that the scope of skills measured by achievement tests is limited.

Most of the matters set forth in the preceding paragraph are part and parcel of the educational goals of many of the school districts of the State that are not measurable by the standardized achievement tests.

However, defendants contend that even though the standardized tests are deficient in measuring pupil achievement in all aspects of the educational goals for children, they are the only tests which have been devised. Consequently, defendants urge that significant and consistently demonstrable effects of expenditures on the quality of a child's education as measured by pupil performance on the standardized achievement tests, which constitute the only common state-wide method that is availale to measure pupil performance, ought to be the standard for the burden of proof required of plaintiffs to prove the truth of the allegations of their complaint.

The net effect of the position of defendants is that the quality of a child's education must be defined solely and exclusively in terms of performance by pupils of a school district in the state-wide reading, mathematics and language tests. Under this view, the question of whether the children in a low-wealth school district are receiving a low-quality or a high-quality education depends upon the level of their performance in these standardized tests.

Because of the established and admitted shortcomings of the standardized pupil-achievement tests, this court is unwilling to accept a definition of the quality of an educational program that is made to depend solely upon pupil performance on these standardized achievement tests, or to accept the principle that the distinction between a low-quality and a high-quality educational program is predicated upon variations in pupil performance in these standardized tests. This court takes this position even though the court has indicated previously herein that it is convinced by the evidence intoduced in this case at bench that a school district's expenditure amount per pupil has a significant effect on the quality of its educational program as measured by pupil test-score results on the standardized pupil-achievement tests.

In light of the many different educational goals set by school districts to be achieved for their pupils, and which goals are not subject to measurement by the standardized reading, mathematics and language tests, consideration must be given to whether there is merit in plaintiffs' contention that the quality of an educational program should be measured in terms of what a school district is able to offer to its pupils, as contrasted with what other school districts are able to offer to their pupils.

Opinions have been expressed by many of the witnesses that for the purpose of achieving equity among the school children of the State, the quality of a child's education or the quality of an educational program must be defined in terms of school-district offerings which is an input measure, rather than in terms of pupil performance on the standardized achievement tests which is an output measure.

The principle of school-district offerings as a measure of educational quality starts with the concept that the amount of money per pupil which a school district has to spend governs the quality of its educational offerings to the pupils of the district.

The differences in school-district offerings that can result from the significant disparities in per-pupil expenditures between school districts under SB 90 and AB 1267 have been labeled by some of the educational experts who testified as substantial inequities in educational opportunities that will be manifested in such school characteristics as (1) varying class size; (2) teacher quality; (3) curricular offerings; (4) length of school day; (5) adequacy of materials and equipment; and (6) variations in supportive services such as the number of counselors, the training of counselors, the number of teacher aides and the type of maintenance of buildings and equipment.

Edwin H. Harper, California's Deputy Superintendent of Public Instruction for Administration, testified that for the most part, the low-wealth school districts that have the lesser per-pupil amounts available for expenditures, must spend their funds primarily to meet the State mandated program requirements such as providing for courses in physical education and certain science courses for college entrance preparation, while the high-wealth school districts, with much higher per-pupil amounts available for expenditure, are able to offer their pupils expanded program offerings in terms of satisfying the total educational needs of the children rather than being limited to providing the program requirements imposed by legislative enactments.

Wilson C. Riles, California's State Superintendent of Public Instruction, testified that the amount of funds

a school district has to spend constitutes a major factor in determining the quality of the educational program being offered by such school district. It was his opinion that under SB 90, the school districts with substantially more revenue to spend will have the opportunity to be more selective in their staffs and to bid for the best teachers because of the higher salary schedules, and the opportunity to select more materials, better equipment, to be innovative and creative, and to have flexibility in meeting the individual needs of pupils; that these are the things that will provide a better-quality educational program for high-wealth school districts than will be possible for low-wealth school districts which will be spending on a per-pupil basis amounts at about the level of the foundation program.

Riles also expressed an opinion that significant differences in educational offerings between high-wealth and low-wealth school districts is not a question of frills; that if a school district has the money, it can have a richer curriculum and greater options, not only in providing a larger number of courses but in the way that courses may be taught such as in the language courses where individual tape recording and listening may be provided.

Because of the significant disparities in spending that will exist between school districts and the substantial variations in school-district educational offerings resulting therefrom, it was the opinion of Riles that pupils in some school districts will have superior or high-quality educational programs while pupils in other school districts will be presented with just adequate or poor-quality educational programs.

Houston I. Flournoy, Controller of the State of California, also testified in support of the school-district-

offerings concept of educational equality. It was his conclusion that under SB 90, with one school district being able to spend twice as much as another school district, substantially equal educational opportunities are not being afforded to children throughout the State of California.

Charles S. Benson, Professor in the Department of Education, University of California, Berkeley, and director of the consultant staff to the California Senate's Select Committee on public school financing, testified that his concept of equality of educational opportunity for all students involves a combination of what is offered to students by a school district and what students obtain from the programs offered. It was Benson's opinion that under SB 90 there will continue to be substantial disparities in expenditures between school districts and, hence, in the quality of educational opportunities offered throughout the State.

Richard M. Clowes, Los Angeles County Superintendent of Schools, testified that his concept of a high-quality educational program is one that involves a program of educational offerings available in the schools that will, if taken advantage of, meet the needs of the pupils, and includes the principle that whatever is done in school is done well, such as good teaching. It was the opinion of Clowes that the amount of money available to a school district affects the quality of education being offered because facilities, equipment, supplies and services in the form of teachers and other employees all require expenditures and, if expenditures are restricted because of an absence of funds, the educational program of the district will necessarily be impaired.

Clowes emphasized that good programs of vocational education and guidance, good health programs and programs in the fine arts are items which may be neglected by a school district because of inadequacy of funds, and yet these are things which have a lot to do with the general atmosphere of schools, the confidence that a community has in its schools, and the quality of what schools do for young people in their total lives. It was also the opinion of Clowes that adequate facilities, closer personal attention of students by teachers, uncrowded classes and an adequate choice of courses are factors involved in pupils' capabilities and progress that are not measured by pupil performance on achievement tests, but are factors, nevertheless, that represent important educational values.

The testimony of the superintendents of low-wealth districts was to the effect that an expenditure amount per pupil that was around the foundation level simply precluded school-district offerings to pupils of high-quality educational programs such as being offered to their pupils by the high-wealth districts with their much higher per-pupil expenditures. This testimony indicated that lack of resources required larger class sizes than were desirable; limited the class day to five classes instead of six; precluded adequate counseling services and adequate health services; permitted limited vocational programs where the need was for strong vocational programs; precluded hiring paraprofessionals or teacher aides; precluded offering elective courses over and above the legislatively mandated programs; prevented an equal access to the best teachers because of lower salary levels for teachers; prevented satisfactory maintenance of buildings and equipment; and precluded

the purchase and maintenance of first-class educational materials.

The witness-superintendents of low-wealth school districts whose testimony has been summarized above included: Hyrum M. Loutensock, Lynwood Unified School District; William J. Johnston, Los Angeles Unified School District; Kenneth E. Ricketts, Lawndale Elementary School District; Jerry Holland, Baldwin Park Unified School District; Stuart E. Gothold, South Whittier Elementary School District; and Walter J. Ziegler, Simi Valley Unified School District.

That the dollar amount of funds per pupil which a school district is able to spend bears a significant relationship to the quality of educational programs offered to pupils was expressed also in the testimony of superintendents of various high-wealth districts. These included Henry W. Dingus, San Marino Unified School District; Dale M. Harter, El Segundo Unified School District; Robert E. Shanks, Burbank Unified School District; and Kenneth L. Peters, Beverly Hills Unified School District.

These superintendents of high-wealth school districts testified that the amount of money available to a school district was a key factor in the ability of the district to produce a high-quality educational program; that adequate facilities, personal attention by teachers, a wide selection of course offerings and a good learning environment were all important to the high-quality educational programs being offered in their districts, and that money is an important element in obtaining these items. All of these superintendents stated that any substantial cut in their school districts' available funds would necessarily mean a reduction in the high quality

of the educational programs being offered by their school districts to their pupils.

It is this court's conclusion, based upon all the evidence presented in the case at bench, that the appropriate standard for measuring the quality of education being provided the pupils of a school district is the *school-district-offerings* standard rather than the pupil-achievement standard. The evidence is overwhelming that the wide disparities in expenditure levels between low-wealth school districts and high-wealth school districts, which will be continued for years under SB 90 and AB 1267, have significant adverse effects on the quality of the educational programs and opportunities afforded the children in the low-wealth school districts compared with the quality of educational programs and opportunities afforded the children in the high-wealth school districts.

It is an inescapable fact that under SB 90 and AB 1267, the high-wealth school districts, with far greater funds available per pupil than are available to the low-wealth school districts, have the distinct advantages of being able to pay for, and select, the better-trained, better-educated and more experienced teachers, the ability to maintain smaller class sizes by employing more teachers, the ability to offer a wider selection of courses per day, the ability to provide better and a greater variety of supportive services such as more counselors and teacher aides, the ability to obtain the latest and best educational materials and equipment, and the ability to keep the educational plants in tip-top shape. These are the kinds of items that go into the making of a high-quality educational program that benefits the children of a school district

that has a relatively high level of expenditures flowing from high assessed valuations of property. As observed by Kenneth L. Peters, the Superintendent of the Beverly Hills School District, the lower-quality educational offerings tend to be associated with the low-wealth school districts rather than with the high-wealth school districts.

The conclusion is thus compelled that under SB 90 and AB 1267, the pupils of low-wealth school districts such as Baldwin Park are being forced to attend schools that are offering them a much lower quality of educational programs and opportunities than the quality of educational programs and opportunities that is being offered to the pupils who attend schools in California's high-wealth school districts such as Beverly Hills. Pupils in low-wealth school districts are thus being denied the equality of educational opportunity and uniformity of treatment called for by the *Serrano* court in order for the State's public school financing system to comply with the demands of the equal-protection-of-the-laws provisions of the California Constitution.

It is this court's holding, therefore, that plaintiffs have established the truth of the allegations of their complaint, and that the State's financing system for public elementary and secondary schools, including the changes wrought by the SB 90 and AB 1267 legislation, constitutes a violation of the California Constitution's equal-protection-of-the-laws provisions. This violation results from the fact that, even though SB 90 and AB 1267 have made significant improvements in the foundation-program system of financing public schools, including the narrowing of expenditure differentials be-

tween school districts, there remain substantial disparities in per-pupil revenues and expenditures between school districts because of the substantial variations in assessed valuations of taxable property between school districts. Under these circumstances, such per-pupil expenditure differentials between school districts constitute a denial of equality of education and uniformity of treatment to the children of the low-wealth school districts of the State. The financing system produces an invidious and constitutionally impermissible discrimination in educational quality and educational opportunity for the children attending school in low-wealth school districts and does not comply with the *Serrano* court's demand for state-wide educational equality and uniformity of treatment for *all* the school children of California.

Various witnesses have expressed opinions that the foundation-program method of school financing is incapable of modifications to eliminate its unconstitutional features. These witnesses have proposed various alternative plans as a means of satisfying the *Serrano* court's holding as to constitutional requirements. These plans include (1) full State funding with state-wide imposition and control of real property taxes; (2) consolidation of the present 1,067 school districts into about 500 districts with boundary realignments to equalize assessed valuations of real property between all school districts; (3) retention of the present school-district boundaries but the removal of commercial and industrial property from local taxation for school purposes; and (4) school district power equalizing which has as its essential ingredient the concept that school districts could choose to spend at different levels but for each level of expenditure chosen, the tax effort

would be the same for each school district choosing such level, whether it be a high-wealth or a low-wealth school district.

However, it is not the function of this court to make a determination of whether any particular plan of public school financing is superior to any other plan. This court, therefore, will not undertake an exposition of the details of these alternative plans. The court will simply point out again the following objectionable features of the present financing system from an equal-protection-of-the-laws standpoint: (1) the basic aid payments of $125 per pupil to the high-wealth school district; (2) the right of voters of each school district to vote tax overrides and raise unlimited revenues at their discretion; (3) disparities between school districts in per-pupil expenditures, apart from the categorical aids special-needs programs, that do not reduce to insignificant differences, which mean amounts considerably less than $100 per pupil, within a maximum period of six years; and (4) variations in a tax rates between school districts that are *not* reduced to nonsubstantial variations within the same maximum period set forth in subparagraph (3) for the equalization of per-pupil expenditure levels.

The court has indicated six years as a maximum period for the gradual elimination of discrimination in per-pupil expenditures between school districts because the constitutional rights of the children in low-wealth school districts must be fully achieved at a pace faster than that of all due deliberate speed. It is this court's opinion that the California Constitution's equal-protection-of-the-laws provisions must be interpreted to require at least a gradual but *nondeliberate* movement

toward the full realization of plaintiffs' constitutional rights.

This court has not discussed previously the question of the *Serrano* court's holding regarding tax-rate equality for the plaintiff-parents in the case at bench. We now turn to a consideration of this aspect of the case.

In the *Serrano* opinion the court points out that in the second cause of action of plaintiffs' complaint, plaintiff-parents allege that they are taxpayers and that as a direct result of the financing system, they are required to pay taxes at a higher rate than taxpayers in many other school districts in order to secure for their children the *same* or even *lesser* educational opportunities. This statement in the *Serrano* opinion seems to say that if the taxpayers in one school district are compelled to pay a higher tax rate than taxpayers of another school district in order to obtain equality of educational opportunity for their children, they are denied equal protection of the laws. Thus, if the parent-taxpayers of Badwin Park must pay a higher tax rate than the parents pay in Beverly Hills in order to produce substantially less revenue for educational purposes than is produced in Beverly Hills, there is a denial of equal protection of the laws to the Baldwin Park parents.

But it does not appear to this court that the *Serrano* court has imposed any requirement for constitutionality that there must be the production in each school district of the same amount of revenue from the same tax rate. This court interprets the *Serrano* opinion to mean that the revenue produced from the same tax rate may vary between school districts so long as the State insures that for the same tax rate, the children of

the plaintiff-parents in Baldwin Park and of parents in other low-wealth school districts will receive educational opportunities equal to those received by the children of Beverly Hills and of parents of other high-wealth school districts who pay the same tax rate. This means simply that there can be no substantial disparities in educational expenditures between school districts that result from the ability of one school district to raise more school revenues than the revenues raised by another school district because of the higher assessed valuations of real property in one school district over another.

If the State's aid to a low-wealth school district brings its per-pupil school expenditures to a level that is not substantially different from the level of other school districts, the fact that the tax rate in a low-wealth school district does not produce the same amount of revenue as the same tax rate in a high-wealth school district would appear to be irrelevant. It is to be noted that the *Serrano* court first stated that the plaintiffs' second cause of action by the plaintiff-parents set forth the constitutionally defective financing scheme by incorporating the allegations of the first cause of action which was the cause of action stated by the plaintiff-children. It was then that the *Serrano* court observed that, additionally, the plaintiff-parents alleged that they were required to pay taxes at a higher rate than taxpayers in many other school districts in order to secure for their children the same or lesser educational opportunities.

The *Serrano* court was mainly concerned with the cause of action alleged by plaintiff-parents because of the injunctive relief requested by *all* plaintiffs, as

the court stated: "Plaintiff parents then clearly have stated a cause of action since '[i]f the . . . law is unconstitutional, then county officials may be enjoined from spending their time carrying out its provisions. . . .'" (*Serrano, supra,* 5 Cal.3d 584, 618, 96 Cal.Rptr. 601.) In discussing why the school financing system is unconstitutional, the *Serrano* court does not emphasize the differences in tax burdens but, instead, stresses the point that the system is unconstitutional because, if the allegations of the first cause of action are true, then the quality of a child's education is made to depend upon the taxable resources of the school district.

On behalf of plaintiffs, Amicus Curiae briefs were filed as follows: A. L. Wirin, Fred Okrand, Laurence R. Sperber and John D. O'Loughlin for American Civil Liberties Union of Southern California; Dorothy L. Schecter, Ventura County Counsel, for Simi Valley Unified School District, California School Boards Association, Atascadero Unified School District, Chino Unified School District, Grant Joint Union High School District, Grossmont Union High School District, Hayward Unified School District, Lynwood Unified School District, Lompoc Unified School District, Lucia Mar Unified School District, Ojai Unified School District, Pomona Unified School District, Rio School District, Rowland Unified School District, San Lorenzo Unified School District, Temple City Unified School District and Vista Unified School District; John E. Coons, Robert H. Mnookin and Stephen D. Sugarman for National Congress of Parents and Teachers (the National PTA), California Congress of Parents and Teachers, Inc. (the California PTA), and Childhood and Government Project (part of Earl Warren Legal

Institute of the School of Law (Boalt Hall) University of California (Berkeley).

In light of the foregoing, it is this court's holding that plaintiffs are entitled to a judgment declaring that the California public school financing system, including those provisions of SB 90 and AB 1267 that pertain to this system, is invalid as a violation of the equal-protection-of-the-laws provisions of the California Constitution.

The judgment to be entered by this court in accordance with the views expressed herein will contain provisions to the effect (1) that this court's judgment is not intended to invalidate in any way any *past* acts constituting the operation of the public school financing system, including the SB 90 and AB 1267 legislation; (2) that the existing public school financing system, including the SB 90 and AB 1267 legislation, shall continue to operate until an appropriate public school financing system that is not violative of the California Constitution's equal-protection-of-the-laws provisions can be placed into effect; and (3) that this trial court is retaining jurisdiction of ths action so that any of the parties may apply for appropriate relief in the event that relevant circumstances develop such as a failure by the legislative and executive branches of the State government to take the necessary steps to establish, within a reasonable time, a public school financing system that complies with the equal-protection-of-the-laws provisions of the California Constitution.

However, there is no necessity at this time for the court to make a finding or express an opinion as

to what period of time constitutes a reasonable period of time that is required in order that a public school financing system which will satisfy the equal-protection-of-the-laws provisions of the California Constitution can be formulated, enacted into law and placed into operation.

Dated this 10th day of April, 1974.

BERNARD S. JEFFERSON
Bernard S. Jefferson
Judge of the Superior Court

APPENDIX F.

Judgment of the Trial Court After Trial on Remand by "Serrano I".

Superior Court of the State of California, for the County of Los Angeles.

John Serrano, Jr., individually; John Anthony Serrano, by John Serrano, Jr., his guardian ad litem; Lillian Acuna Aceves, individually; Billy Aceves, by Lillian Acuna Aceves, his guardian ad litem; Paul Aceves, by Lillian Acuna Aceves, his guardian ad litem; Patrick Aceves, by Lillian Acuna Aceves, his guardian ad litem; Joseph Cain, individually; Silvester Cain, by Joseph Cain, his guardian ad litem; Vanessa Cain, by Joseph Cain, her guardian ad litem; Joanna Denise Cain, by Joseph Cain, her guardian ad litem; Wrenford Boen Hall, individually; Jon Primus Hall, by Wrenford Boen Hall, his guardian ad litem; Peggy J. Kidwell, individually; Elizabeth Adele Evans, by Peggy J. Kidwell, her guardian ad litem; Diane Michelle Evans, by Peggy J. Kidwell, her guardian ad litem; Stephanie Lyn Kidwell, by Peggy J. Kidwell, her guardian ad litem; Daphne Anne Kidwell, by Peggy J. Kidwell, her guardian ad litem; Mamie Price, individually; James Archer, by Mamie Price, his guardian ad litem; Monica Archer, by Mamie Price, her guardian ad litem; Mona Archer, by Mamie Price, her guardian ad litem; Gene Anthony Price, by Mamie Price, his guardian ad litem; Burrell Price, Jr., by Mamie Price, his guardian ad litem; Gerald Price, by Mamie Price, his guardian ad litem; Marcelene Thomas, individually, Kenneth Lee Plair, by Marcelene Thomas, his guardian ad litem; Willetta Heath, by Marcelene Thomas, her guardian ad litem; Consuelo Valdivia, individually; Fred

Valdivia, by Consuelo Valdivia, his guardian ad litem; Mike Valdivia, by Consuelo Valdivia, his guardian ad litem; Esperanza Valdivia, individually; Yolanda Garcia, by Esperanza Valdivia, her guardian ad litem; Rita D. Garcia, by Esperanza Valdivia, her guardian ad litem; Carrie C. Garcia by Esperanza Valdivia; her guardian ad litem; Victoria Valdivia, individually; William Valdivia, by Victoria Valdivia, his guardian ad litem; Patsy P. Valdivia, by Victoria Valdivia, her guardian ad litem, Plaintiffs, California Federation of Teachers, AFL-CIO, Plaintiff in Intervention, vs. Ivy Baker Priest, Treasurer of the State of California; Wilson C. Riles, Superintendent of Public Instruction of the State of California; Houston I. Flournoy, Controller of the State of California; Harold J. Ostly, Tax Collector and Treasurer of the County of Los Angeles; Richard M. Clowes, Superintendent of Schools of the County of Los Angeles, Defendants, Burbank Unified School District; El Segundo Unified School District; Glendale Unified School District; Beverly Hills Unified School District; Long Beach Unified School District; South Bay Union High School District; San Marino Unified School District, Defendants in Intervention. No. 938,254.

Filed: August 30, 1974.

The above-entitled cause came on regularly for trial on the 26th day of December, 1972 in Department 49 of the above-entitled court, before the Honorable Bernard S. Jefferson, Judge presiding, sitting without a jury; Sidney M. Wolinsky and J. Anthony Kline of Public Advocates, Inc., John E. McDermott, Terry J. Hatter, Jr., Abby Soven, Joel Edelman, and Rose Matsui Ochi of the Western Center on Law and Poverty,

Jerome L. Levine, David A. Binder, Harold W. Horowitz, and Michael H. Shapiro, appearing as attorneys for plaintiffs; Levy & Van Bourg by Susan Salisbury, appearing for plaintiff in intervention California Federation of Teachers, AFL-CIO; Evelle J. Younger, Attorney General for the State of California by Edward M. Belasco, Deputy Attorney General, and Thomas E. Warriner, Deputy Attorney General, for defendant Ivy Baker Priest, Treasurer of the State of California; Munger, Tolles, Hills & Rickershauser by Robert Miller, Simon M. Lorne and Dennis Brown, and Kadison, Pfaelzer, Woodard, Quinn & Rossi by Stuart L. Kadison and William Vetter, appearing for defendant Houston I. Flournoy, Controller of the State of California; Thomas M. Griffin, Chief Counsel of the California Department of Education, appearing for defendant Wilson C. Riles, Superintendent of Public Instruction of the State of California; John H. Larson, County Counsel for the County of Los Angeles, by James W. Briggs, Division Chief, and Donovan M. Main, Deputy County Counsel, appearing for defendants Harold J. Ostly, Tax Collector and Treasurer of the County of Los Angeles, and Richard M. Clowes, Superintendent of Schools of Los Angeles County, and defendants in intervention Burbank Unified School District, El Segundo Unified School District, Glendale Unified School District, Beverly Hills Unified School District, Long Beach Unified School District, South Bay Union High School District, and San Marino Unified School District; and evidence having been introduced on behalf of all parties and the Court having considered the same and having heard the arguments of counsel and being fully advised in the premises, and having made its Findings of Fact and having drawn its Conclusions of Law:

IT IS ORDERED, ADJUDGED AND DECREED:

1. That the California Public School Financing System for public elementary and secondary schools, including those provisions of the SB 90 and AB 1267 legislation that pertain to this system, is invalid as a violation of Article I, sections 11 and 21, of the California Constitution, commonly known as the equal-protection-of-the-laws provisions of said Constitution.

2. That said California Public School Financing System does not violate the equal-protection-of-the-laws provisions of the Fourteenth Amendment to the United States Constitution.

3. That the following features of said California Public School Financing System, including the SB 90 and AB 1267 legislation pertaining thereto, are violative of said equal-protection-of-the-laws provisions of the California Constitution:

(a) The basic aid payments of $125.00 per pupil to high-wealth school districts.

(b) The right of voters of each school district to vote tax overrides and raise unlimited revenues at their discretion.

(c) Wealth-related disparities between school districts in per-pupil expenditures, apart from the categorical aids special needs programs, that are not designed to, and will not reduce to insignificant differences, which mean amounts considerably less than $100.00 per pupil, within a maximum period of six years from the date of entry of this Judgment.

(d) Wealth-related variations in tax rates between school districts that are not designed to, and will not reduce to nonsubstantial variations within the same

maximum six-year period set forth in subparagraph (c) above for the equalization of per-pupil expenditure levels.

4. That wealth-related, per-pupil expenditure disparities between school districts which are violative of said equal-protection-of-the-laws provisions of the California Constitution include, but are not limited to, the following:

(a) High-wealth, basic-aid school districts do not make the same tax effort to reach the foundation-program levels as do low-wealth, equalization-aid school districts.

(b) Above the foundation-program levels, local property wealth is the primary determinant of the amount of revenue generated for a given tax rate.

(c) The amount of revenue derived from override taxes is determined solely by the amount of taxable property wealth within a particular school district.

(d) Low-wealth school districts are denied an equal opportunity to exceed the foundation-program levels by utilizing voted overrides under Section 20906 of the Education Code.

(e) The amount of revenue derived from permissive override taxes is determined solely by the amount of taxable property wealth within a particular school district.

(f) Unused voted tax overrides are used to determine maximum school district revenue limits under the SB 90 and AB 1267 legislation.

5. That all changes in, or modifications of, or substitutions for, the existing California Public School Financing System for public elementary and secondary

schools, that shall be designed, enacted into law, and placed into operation by legislative and executive actions to eliminate the unconstitutional features of said existing Financing System, if designed, enacted into law, and placed into operation to take effect on a gradual basis in the elimination of said unconstitutional features, must be so desgined, enacted into law, and placed into operation that such changed, modified, or substituted California Public School Financing System shall be in full compliance with said equal-protection-of-the-laws provisions of the California Constitution no later than six years from the date of entry of this Judgment.

6. That any California Public School Financing System for public elementary and secondary schools that will require more than six years from the date of entry of this Judgment for its design, enactment into law, and placing into operation so as to bring such System into full compliance with said equal-protection-of-the-laws provisions of the California Constitution will constitute a denial to plaintiffs of their constitutional rights for a clearly unreasonable length of time.

7. That this Judgment is not intended to invalidate, and shall not be construed or considered as invalidating in any way, any past acts constituting the operation of the California Public School Financing System for public elementary and secondary schools, including the SB 90 and AB 1267 legislation as a part thereof.

8. That the existing California Public School Financing System for public elementary and secondary schools, including the SB 90 and AB 1267 legislation as a part thereof, shall continue to operate for a reasonable length of time so that an appropriate Cali-

fornia Public School Financing System that is not violative of said equal-protection-of-the-laws provisions of the California Constitution can be designed, enacted into law, and placed into operation.

9. That this Judgment is not intended to require, and is not to be construed as requiring, the adoption of any particular plan or system for financing the public elementary and secondary schools of the state, but only that whatever plan or system for financing the public elementary and secondary schools that may be adopted must be one that will fully comply with the equal-protection-of-the-laws provisions of the California Constitution in accordance with paragraph 5 of this Judgment.

10. That this trial court is retaining jurisdiction of this action and over the parties hereto so that any of such parties may apply for appropriate relief in the event that relevant circumstances develop, such as a failure by the legislative and executive branches of the state government to take the necessary steps to design, enact into law, and place into operation, within a reasonable time from the date of entry of this Judgment, a California Public School Financing System for public elementary and secondary schools that will fully comply with said equal-protection-of-the-laws provisions of the California Constitution.

11. That plaintiffs shall recover from defendants and defendants in intervention costs expended by plaintiffs in the amount of $4,405.93.

12. That the right, if any, and the amount, if any, of attorneys' fees to be awarded to plaintiffs shall be determined in a separate proceeding by this trial court.

The clerk is ordered to enter this Judgment.

Dated this 30th day of August, 1974.

BERNARD S. JEFFERSON
Bernard S. Jefferson
Judge of the Superior Court

APPENDIX G.

Relevant Portion of Appellants' [Defendants'] Opening Brief on Appeal in Serrano II, Filed in August of 1975.

III

THE TRIAL COURT HAD NO JURISDICTION TO PROCEED WITH THE TRIAL IN THE ABSENCE OF THE LEGISLATURE AND THE GOVERNOR, WHO ARE INDISPENSABLE PARTIES TO THIS ACTION.

Plaintiffs and respondents have contended throughout this litigation that it is the duty of the Legislature to restructure the California Financing System to comport with equal protection requirements. They claim education is a "fundamental" interest, pointing to Sections 1 and 5 of Article IX of the California Constitution as imposing upon the Legislature the duty to encourage by all suitable means the promotion of education and to provide for a system of common schools by which a free school shall be kept up and supported by each district at least 6 months of every year. Briefly stated, plaintiffs and respondents assert that the California Constitution imposes these duties on the *Legislature,* and that the *Legislature* has failed to properly carry out these duties.

The trial court, concurring with plaintiffs and respondents entered its judgment, the operative and directory provisions of which are addressed solely to the *Legislative* and *Governor.*[72]

[72]Paragraphs 5, 6, 8, 9 and 10 of the Judgment (11 C.T. 2842-2843) are clearly and unequivocally directed to the legislative and executive branches of State government. There are no substantive provisions of the judgment directed to the parties named and served as defendants and there is nothing

The question naturally arises, why are the Legislature and Governor not parties-defendants in this case.[73] Also, why are the Legislature and the Governor not

said defendants are empowered to do which would enable them to carry out any of the directives set forth in the above-referenced paragraphs of the judgment.

Most importantly, paragraph 10 of the judgment (11 C.T. 2843) retains jurisdiction of the action and over the parties

> ". . . so that any of such parties may apply for appropriate relief in the event that relevant circumstances develop, *such as a failure by the legislative and executive branches of the state government to take the necessary steps to design, enact into law, and place into operation, within a reasonable time from the date of entry of this judgment,* a California Public School Financing System for public elementary and secondary schools that will fully comply with said equal-protection law provisions of the California Constitution." (Emphasis added)

Thus, the conditions for retention of the court's jurisdiction and for any further application for relief depend entirely upon actions of the Legislature and Governor, who are not parties to this action and over whom neither the parties nor the court have control or jurisdiction.

[73]Perhaps the strongest clue to the answer to this question is found in the scholarly "bible" for this and other school finance litigation, *Private Wealth and Public Education,* Coons, Clune and Sugarman, Belknap Press of Harvard University Press, Cambridge, Mass. (1970), in which the problem is considered at page 445 as follows:

> "In this form of litigation the proper defendant is again difficult to identify. All the relief sought is beyond the power of any agent of the state operating under the existing state law. The real target is the legislature in all these cases but even more directly here. Perhaps the legislature should be named defendant as it was in the Colorado Assembly case. (*Lucas v. Forty-fourth General Assembly,* 377 U.S. 713 (1964).) The problem is that in reapportionment there was, at least in theory, a duty, for public education is concededly not a right. Yet there is at least this right, that public education be either validly structured or abolished. (The thought is reminiscent of the prescription of *Brown v. Board of Education,* 347 U.S. 483 (1954), which passed no judgment upon the right to an education, but only upon the right to its dispensation without racial segregation.) Seemingly the state legislature has a duty to do one or the other which would render it the proper defendant. Even if such a duty exists, however, the inclusion of the legislature as a party is awkward and undesirable unless it is clearly necessary."

afforded the opportunity to defend their actions in this case? Also, what is it that the defendants (selected by plaintiffs and respondents) can do about the alleged derelictions of the Legislature?

Perhaps the answer of the plaintiffs and respondents, and of the trial court,[74] is that the Legislature is not amenable to suit or would not be a proper party. But this, at least since the abolishment in California of the doctrine of sovereign immunity in *Muskopf v. Corning Hospital District* (1961) 55 Cal.2d 211; 11 Cal.Rptr. 89, 359 P.2d 467, is no answer. In *Silver v. Brown* and *Adams v. Brown* (1965) 63 Cal.2d 270; 46 Cal.Rptr. 308, 405 P.2d 132, consolidated cases seeking reapportionment of the Senate and the Assembly, the respondents in the writ of mandate proceedings included the Governor, the members of the Senate, and the members of the Assembly. In the Assembly case the Senate and all the Senators were intervenors. It is thus recognized that the Senate and the Assembly, and/or the members of those bodies and the Governor, may be proper parties. See also *Legislature v. Reinecke,* 6 Cal.3d 595, 99 Cal.Rptr. 481, 492 P.2d 385; 9 Cal.3d 166; *Lucas v. Colorado General Assembly,* 377 U.S. 713, 12 L.Ed.2d 632, 84 S.Ct. 1472; *Mexican-American Political Association v. Edmund G. Brown, as Secretary of State, The People et al., Real Parties in Interest (1973)* 8 Cal.3d 733; 106 Cal.Rptr. 12, 505 P.2d 204; and *Diamond v. James S. Allison, as Registrar of Voters; Legislature*

[74]The trial court, in its findings of fact and conclusions of law overruled and denied defendants' and appellants' 10th, 13th, 14th, 15th, and 16th affirmative defenses (11 C.T. 2827-2828), which defenses (2 C.T. 185-187) generally raised the lack of power of the named defendants to effectuate changes in the school financing system.

of the State of California et al., Real Parties in Interest (1973) 8 Cal.3d 736; 106 Cal.Rptr. 13, 505 P.2d 205, in which the attorneys for the real parties in interest were George H. Murphy, Legislative Counsel, and Herman F. Selvin.

If the Legislature (or the Assembly and the Senate or the members thereof) and the Governor, are proper parties, surely they are indispensable parties. Plaintiffs' and respondents' posture throughout these proceedings has been to recognize that if they are successful in obtaining a judgment declaring the system of laws establishing the school financing system to be unconstitutional, such a declaration should not cause the schools to shut their doors, but rather that the system must be ongoing without interruption. Even though the duty of establishing these laws devolved upon the Legislature, plaintiffs and respondents have chosen not to sue the Legislature or its two Houses, or the Governor who has the power to veto, but instead have selected State and County officers who have no power to restructure the financing system in any way.

Plaintiffs' and respondents' suit, and the judgment of the trial court, challenges the manner in which the people of California, acting through their elected representatives have structured the school financing systems. They rest their claim upon equal protection provisions of the California Constitution. Yet they would deny that [sic., "the"] people who created this financing system through their elected representatives of their day in Court by selecting as defendants onl yofficers to whom various duties are delegated by the State, duties which do not include structuring or restructuring

the laws establishing the school financing system. The effect of this, appellants contend, is to deny to the people, including appellant public officers and the citizens of appellant school districts, due process of law under amendments V and XIV to the United States Constitution and similar guarantees of California's Constitution and laws.

In the leading case of *Bank of California v. Superior Court* (1940) 16 Cal.2d 516, 106 P.2d 879, the California Supreme Court carefully delineated the rules of [sic.] governing joinder of "necessary" parties and "indispensable" parties. Where a party's rights will necessarily be affected by the litigation, perhaps to that party's detriment, the party is indispensable. Where that is the case, the court lacks jurisdiction to proceed further until such "indispensable" party is joined.

Plaintiffs and respondents may argue that, although the Assembly and Senate may be indispensable parties in a reapportionment case, the rule should not be applied herein because the rights of the Legislature would not be as adversely affected in this litigation as compared with the reapportionment type of case. But, of course, in the reapportionment cases, the judicial concern is not with whether a particular man is or is not to hold office, but rather whether the office is lawfully filled by a person who represents a proper proportion of the people.

Plaintiffs and respondents assert that the people's interest in education is of the same order of "fundamentality" as is their interest in proper representation in the political process. If that is the case, surely the people represented by their legislators and governor, are proper, necessary, and indispensable parties in this

litigation. Were it otherwise, suits to declare complex sets of laws providing for vital governmental services might be attacked by finding public officers who are not interested in defending such laws, or who might even be sympathetic to the views of the plaintiffs, and we could find the laws being declared unconstitutional without proper representation in court.

Plaintiffs and respondents themselves insist that the financing laws in question shall continue in operation until the Legislature has had an opportunity to rectify them should they be declared unconstitutional. Plaintiffs' recognition that these laws must continue in operation and that the Court should give the Legislature a reasonable time to bring them up to the alleged constitutional requirements, constitutes an implicit acknowledgment that the Legislature and the Governor are the proper parties in this case.

As stated in *Covarrubias v. James* (1971) 21 Cal. App.3d 129, 134; 98 Cal.Rptr. 257, 260.

> "The failure to bring 'indispensable parties' before the court is jurisdictional; without them the court is powerless to proceed further. (*Bank of California v. Superior Court*, supra, 16 Cal.2d 516, 522; *Southern Cal. Title Clearing Co. v. Laws*, 2 Cal.App.2d 586, 589 [83 Cal.Rptr. 8]; *Estate of Reed*, 259 Cal.App.2d 14, 22 [65 Cal. Rptr. 193].) The requirement is mandatory. (*Hartman Ranch Co. v. Associated Oil Co.*, 10 Cal.2d 232, 265 [73 P.2d 1163].) And the objection that indispensable parties are not before the court may be raised at any time, by demurrer or even for the first time on appeal. (*Pearless Ins. Co. v. Superior Court*, 6 Cal.App.3d 358,

361 [85 Cal.Rptr. 679]; *Guerra v. Packard*, 236 Cal.App.2d 272, 294 [46 Cal. Rptr. 25].)

"Code of Civil Procedure section 389, as relevant at this point, provides: 'When it appears that an indispensable party has not been joined, the court shall order the party asserting the cause of action to which he is indispensable to bring him in. If he is not then brought in, the court shall dismiss without prejudice all causes of action as to which such party is indispensable and may, in addition, dismiss without prejudice any cause of action asserted by a party whose failure to comply with the court's order is willful or negligent.' (See also *Irwin v. City of Manhattan Beach, supra,* 227 Cal.App.2d 634, 638. . . .)"

Accordingly, appellants submit that the Legislature and Governor are proper, necessary and indispensable parties to this action and their exclusion from the case constitutes a denial of due process of law to appellants and the people of California. Although the law favors out-of-court settlements of controversies, and the judgment in this case seems to demand it, defendants and appellants are powerless to seek a settlement of this controversy with plaintiffs and respondents. In order to avoid the consequences of this denial of due process, the judgment should be reversed with instructions to the trial court to proceed only after the Legislature and Governor have been made parties to the action and given an appropriate opportunity to defend and participate.

CLOSING STATEMENT

The plaintiffs sought from the trial court neither equality nor adequacy of educational opportunities.

The trial court gave them neither equality nor adequacy of educational opportunities. All that has been accomplished is an order which gives notice to the lawmakers that unless they redistribute inequalities so as to be free of the influence of "district wealth", the court will undertake to do so.

The inequalities to be redistributed are local supplements, which, the trial court holds, are "significantly" related to educational opportunities. Hence the trial court order is that inequalities in educational opportunities are to be redistributed. Even further, the court decrees that adequacy of educational opportunities is constitutionally irrelevant. The only guidance given the lawmakers is that they must come up with a system which makes the inequalities in educational opportunities, and the inequalities in school tax rates, independent of "district wealth."

Why is district wealth selected as the villain? Why single out district wealth from among a host of other community characteristics embraced within the territorial boundaries of school districts? We have seen that many other community characteristics found within district boundaries can and do significantly affect local supplements. The real complaint, logically, is that we have geographical or territorial "discrimination," not that we have district wealth discrimination. Actual or artificial elimination of district wealth as an influence on local supplementation would merely bring into greater prominence the influence on local supplementation of other community characteristics, such as family income, costs of municipal services, and numerous other indicia of ability and willingness to support the public schools within the district. Included among these other indicia are the proportion of private to public school

attendance; proportion of school-age children to population; higher costs peculiar to the district for services and supplies (as perceived locally but not recognized by the state or federal government by special needs allowances); the skill of school boards and superintendents in convincing their communities of their special needs; and on and on. With district wealth eliminated as an influence on local supplementation, and hence on quality of educational opportunities according to the trial court, a child will find himself more disadvantaged if his address happens to be in a district in which these community characteristics over which he has no control are working against him. A child living in the core of an urban center like San Francisco, Oakland or Los Angeles, is just such a child. In the meantime, the child who "happens" to live in a bucolic suburbia with wealthy parents and neighbors, will find himself more advantaged by his community's characteristics. These are surely the consequences of the unequal incentives induced by state rewards and penalties under a district power equalizing system.

Further, district power equalizing would even fail to achieve its intended purpose—preserving local fiscal control—because the state would inevitably react to its distinguishing "blank check" feature with state review and approval of programs to be financed with matching grants from the state.

So long as local supplements are permissible, inequalities in access thereto are inevitable. Alternative systems would merely redistribute these inequalities. The only way to eliminate such inequalities is to outlaw local supplements altogether. Yet the trial court found no occasion to disagree with the value placed

on local fiscal control by school officials when the court found:

> "251. *Local fiscal control, valued by all school officials,* assumes the existence of a relationship between cost and quality." (11 C.T. 2811, emphasis added.)

Appellants do not come to this Court offering "local fiscal control" merely as an excuse for interdistrict inequality, as Justice Marshall thought the State of Texas was doing in the *Rodriguez* case. (411 U.S. at 126) Respondents and the trial court share with appellants the view that California has a sincere concern for local fiscal control. And, as Justice Marshall said, "The State's interest in local educational control—which certainly includes questions of educational funding—has deep roots in the inherent benefits of community support for public education. Consequently, true state dedication to local control would present, I think, a substantial justification to weigh against simply inter-district variations in the treatment of a State's school children." (*Rodriguez,* supra, 411 U.S. at 126, dissenting opinion.)

Given the inevitability of inequalities when local fiscal control is accorded a real value, on what basis should California's school financing system be held invalid? Surely not on the basis of a mere play on words, such as the complaint that the "financing *scheme:* A. Makes the quality of education . . . a function of the *wealth* of the children's *parents and neighbors,* as measured by the tax base of the school district in which said children reside. . . ." (*Serrano,* supra, 5 Cal.3d at 590, emphasis added.) This Court, assuming on procedural grounds that the allegations were

true, responded: "We have determined that this funding scheme invidiously discriminates against the *poor* because it makes the quality of a child's education a function of the *wealth of his parents and neighbors.*" (*Serrano,* supra, 5 Cal.3d at 589) But as it turns out, plaintiffs weren't talking about the wealth of a child's parents and neighbors. They were talking about "district wealth", or more precisely, the value of taxable property located within the boundaries of the district. Plaintiffs did not prove, and the trial court did not find, that district wealth is in turn a function of the wealth of parents and neighbors residing in a district. (Also, it will be recalled that plaintiffs dropped the allegation that a "disproportionate number of school children who are black children, children with Spanish surnames, [and] children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided.")

Thus plaintiffs completely failed to make out a case that the financing system "invidiously discriminates against the poor" [5 Cal.3d at 589] or against minorities.

"District wealth" was apparently selected from the host of other community attributes as a "suspect" classification because it is the "stuff" of which local supplements are made. Local supplements are simply "skimmed-off" district "wealth". If a district's tax base were a fair measure of the affluence of a district's residents, then it might fairly be said that the financing system invidiously discriminates against the poor. But the

plaintiffs failed to prove that to be the case and the trial court accordingly made no finding that such is the case.

The district-wealth-related standard by which the trial court adjudged the SB 90 financing system to be invalid does not bear close scrutiny. It is illogical and should not stand.

Far more logical and appropriate criteria are available. Since the problem is to achieve a proper balance between equality of educational opportunities and local fiscal control—both of which are protected by the California Constitution and are valued by all school officials—the criteria should deal with the problem directly, and not indirectly by playing on words. The direct approach to the problem is to see to it that the results of the system do in fact reflect a proper balance between quality of educational opportunities and local fiscal control. This can be done very simply by the criterion that local supplements must, when the fiscal year's books are closed, prove to have been relatively small when compared with total revenues. If it turns out that local supplements were too large relative to total revenues, it will be because a statewide consensus has determined that equalized revenues were inadequate to provide good schooling. (This was the situation in 1970 when only 76% of revenues were equalized.) At that point appropriate judicial action could be taken to assure that a proper balance between equalized revenues and local supplements is restored.

Such a criterion directly attacks the problem—in terms of results, not mechanisms (which are more properly for legislative rather than judicial determination)—and carries with it the benefit of assuring a level of adequacy as determined by a statewide consensus of parents and taxpayers.

We offer this criterion even though we appreciate that this Court might accept it, apply it to the present SB 90 system, and find that it falls short. But appellants are concerned not so much in definding SB 90—the status quo—as we are in having sound criteria established for determining the constitutionality of whatever school financing system might come before this Court, and (which probably will turn out to be more important in the long run) in having sound criteria by which the standard of judicial review is determined in each case involving equal protection of the laws under the California Constitution.

We are confident, however, that sound application of the commended criterion, applying an appropriate standard of judicial review which takes into consideration all matters relevant to this sui generis case, will result in a determination that the new SB 90 system has not been shown to fall short of equal protection requirements. Senate Bill 90 was being tried six months before it even went into operation and was found guilty before it had a chance to prove itself. Even now all the data on its actual operations throughout the state is not available for judicial review.

Appellants respectfully submit that California's Senate Bill 90 school financing system strikes an optimum balance between California's cherished values of equal educational opportunities and local fiscal control, while furthering California's vital interest in quality education for all its children, and should be given the opportunity to demonstrate its effectiveness.

Dated: August ...., 1975.

Respectfully submitted,

.....
JOHN H. LARSON,
County Counsel

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JAMES W. BRIGGS,
Division Chief, Schools Division

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DONOVAN M. MAIN,
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Attorneys for Appellants

APPENDIX H.

Relevant Portion of Appellants' [Defendants'] Reply Brief on Appeal in Serrano II, Filed in December of 1976.

III

FAILURE OF THE TRIAL COURT TO ORDER THAT INDISPENSABLE PARTIES—THE LEGISLATURE AND THE GOVERNOR—BE BROUGHT INTO THIS ACTION RESULTED IN A DENIAL OF DUE PROCESS OF LAW UNDER THE UNITED STATES AND CALIFORNIA CONSTITUTIONS.

Respondents state that we included in our argument a "stunning *non sequitur* totally unsupported by any authority" when we stated, " 'If the Legislature (or the Assembly and the Senate or the members thereof) and the Governor are proper parties, surely they are indispensable parties.' Appellants' Opening Brief, pp. 206-207." (Resp. Br., p. 207.)

The statement would indeed be a stunning *non sequitur* if it were intended or understood as saying that all proper parties are indispensable parties. But we preceded that statement with the observation that "the operative and directory provisions of [the trial court's judgment] are addressed solely to the *Legislature* and *Governor*", noting in footnote 72 that paragraphs 5, 6, 8, 9 and 10 of the Judgment "are clearly and unequivocally directed to the legislative and executive branches of State Government." (App. Op. Br., p. 195.) Moreover, our quoted sentence was a lead sentence in a paragraph indicating what we *intended* to show rather than what we believed we had already established.

We think that the judgment demonstrates that the Legislature and the Governor are the real parties in interest in this case in that, in essence, it directs them to restructure the laws governing the school financing system and that should they fail to do so, the courts would take unto themselves their legislative powers and accomplish such restructuring.[26] A stronger case can hardly be imagined for determining that the Legislature and the Governor are indispensable parties to a civil action.

Respondents assert that they "sought a declaratory judgment voiding the statutes and an injunction against the state officials who administer that scheme from implementing it", and go on to rely on authorities upholding the power of courts to enjoin enforcement of unconstitutional or invalid enactments. (Resp. Br p. 210.) But this *sui generis* case is a far cry from those. We cannot attribute to the respondents any desire or motive to close the schools entirely, nor can we attribute to the courts any inclination to do so even if judicial power extends that far.

Respondents would distinguish the reapportionment cases, in which legislatures participated as parties, on the ground that they involved "institutional interests of the Legislature" whereas in this case "the Legislature and the Governor have at most general governmental interests of the State in the validity of its statutes, interests that the proper state administrative

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[26]As previously indicated in footnote 20, because the alternatives other than district power equalizing are patently nonviable, the trial court's judgment in practical effect dictates to the legislature the *structure* of the system it must adopt, *i.e.*, district power equalizing.

officers can adequately and fully represent." Resp. Br., pp. 212-213.

First, the history of this case shows that state administrative officers will not necessarily "adequately and fully represent" the State in the validity of its statutes. Second, a stronger "institutional interest" of the Legislature and Governor can hardly be imagined than their interest in this case: preserving against judicial encroachment their constitutionally established functions of legislating in behalf of the people of California in matters of fundamental interest to the children and involving a large proportion of the entire State budget.

We respectfully submit that the trial court acted in excess of its jurisdiction in proceeding to trial without ordering the plaintiffs to bring the Legislature and the Governor into the action so that they might protect their official interests in properly carrying out their constitutional duties to legislate in this area of vital concern to their constituents. The effect has been to deny to the people of California, including appellant public officers and the citizens of appellant school districts, due process of law under the 5th and 14th Amendments to the United States Constitution and similar guarantees of the California Constitution.

IV

CLOSING STATEMENT.

This case presents to this high Court two unparalleled opportunities:

1. To establish in California a sound approach to be used in determining the appropriate standard of judicial review to be applied in cases involving

California's equal-protection-of-the-laws provisions, and

2. To establish sound criteria for testing whether or not California's school financing system—as it is now or hereafter may be structured—meets California equal protection requirements.

With respect to the approach to be taken in selecting a standard of judicial review, a reading of *Rodriguez* should convince the reader that Mr. Justice Marshall's reasoning is far more persuasive than the majority opinion. The rigidified two-level approach is clearly unsound and should be discarded by this pioneering high Court. It should be replaced by the sound approach advocated by Mr. Justice Marshall which would result in a spectrum of standards which accommodate the degree of closeness of judicial scrutiny to "the character of the classification in question, the relative importance to individuals in the class discriminated against of the governmental benefits that they do not receive, and the asserted state interests in support of the classification." *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 99; 36 L.Ed.2d 16, 81; 93 S.Ct. 1278 (1973), dissenting opinion.

We further believe that it is clear that application of this approach would result in an intermediate degree of closeness of judicial review because of lack of an identifiable "suspect" class of persons allegedly discriminated against, the only slight though "significant" deprivations of educational opportunities and the importance of the State's interest in promoting education by permitting community participation in school fiscal affairs.

Applying such an intermediate standard, we think it clear that the declaratory relief judgment below,

declaring California's vastly improved school financing system to be violative of California's equal-protection provisions on the ground that it is not "fiscally neutral", cannot stand.

With respect to the proper criteria to be applied in testing the validity of a school finance system, we think it clear that the "fiscal neutrality" criteria embraced by the declaratory relief judgment has been fully demonstrated to be unsound. We submit that there is available a vastly superior test for validity—from both an educational and judicial point of view. That test requires that the operation and effect of the system must demonstrate that an optimum balance has been achieved between equalized and unequalized school resources. This test safeguards both equality and adequacy of educational opportunities, now and in the future. It likewise protects the value of education which results from preservation of community participation in school affairs.

If the California courts are to intervene in the legislature's promulgation of laws regulating our vast public school system, the "optimum balance" measure of effectiveness of the system is the measure to use.

With respect to the Legislature and the Governor as indispensable parties, we submit they should have had counsel of their own choosing representing their interests in court. The vast school financing system under attack was legislated by them, and only they could modify it. They were the real parties in interest and were indispensable. The people they represent, including the appellant officers and the citizens of appellant school districts, were denied due process of law.

Reversal of the judgment below will enhance, rather than retard, the cause of equality and adequacy of educational opportunities for the children of California.

Dated: December 1, 1975.

Respectfully submitted,

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APPENDIX I.

Relevant Portions of Appellants' [Defendants'] Petition for Rehearing in Serrano II, Filed in January of 1977.

II

THIS COURT SHOULD CORRECT ITS ERROR IN HOLDING THAT THE LEGISLATURE AND THE GOVERNOR ARE NOT INDISPENSABLE PARTIES AND RESTORE TO THEM THEIR RIGHTS TO BE HEARD, THE ULTIMATE DENIAL OF WHICH WOULD DENY THEM AND THE APPELLANTS DUE PROCESS OF LAW GUARANTEED BY THE UNITED STATES AND CALIFORNIA CONSTITUTIONS.

Contrary to Serrano II's treatment of the indispensable party issue as merely one of procedural and equitable considerations, the issue rises to constitutional dimensions. The right of a party to be heard in judicial proceedings which will inevitably have a substantial effect on the party's vital interests, rights or duties, is a right guaranteed by the due process provisions of Sections 7(a) and 15 of Article I of the California Constitution and the 5th and 14th amendments to the United States Constitution. This right to be heard rises far higher than mere procedural and equitable considerations.

This Court has heretofore zealously safeguarded a person's *due process* rights to be heard *before* his rights could be significantly affected adversely. Thus, in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 539 P.2d 774, this Court held that certain State Civil Service Act provisions violate the due process

clauses of the United States Constitution and California Constitution because they failed to accord a permanent civil service employee any right to be heard *before* the taking of any punitive action against him. (See other California cases in which this Court was similarly zealous in protecting procedural due process rights, cited in *Skelly*, supra, 15 Cal.3d at p. 208.)

The United States Supreme Court, although not so protective of rights of a permanent civil service employee to be heard prior to disciplinary action against him (see *Arnett v. Kennedy* (1974) 416 U.S. 134, 40 L.Ed.2d 15) has nevertheless shown a high degree of concern in protecting persons' due process rights to be heard prior to significant deprivations of significant rights. (See *Goss v. Lopez* (1975) 419 U.S. 565, 42 L.Ed.2d 725, holding that before a student may face suspension for a substantial period of time, e.g., ten days, and consequent interference with a protected property interest, he is entitled to be heard.)

Even prior to the 1868 effective date of the 14th Amendment to the United States Constitution, the United States Supreme Court declared, with respect to the effect of discharge under a state insolvency statute:

> "* * * Insolvent systems of every kind partake of the character of a judicial investigation. Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defense. *Nations v. Johnson*, 24 How., 203; *Boswell v. Otis*, 9 How., 350; *Oakley*

v. Aspinwall, 4 N. Y., 514." (*Baldwin v. Hale* 1 Wall. 223, 233, 17 L.Ed. 531, 534 (1864).)

Shortly after the adoption of the 14th amendment, the United States Supreme Court had occasion to determine the validity of an Oregon in personam judgment where the Oregon court had not obtained jurisdiction with respect to the person of the non-resident defendant. This was in the landmark case of *Pennoyer v. Neff,* 95 U.S. 714, 24 L.Ed. 565 (1877), in which the court declared:

> "Since the adoption of the 14th Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction, do not constitute due process of law. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its

> jurisdiction by service of process within the State, or his voluntary appearance." (95 U.S. at 733, 24 L.Ed. at 572.

Despite due process rights to be heard, this Court's decision determines that the trial court had jurisdiction to proceed in the absence of the Legislature and the Governor on the asserted basis that they are not "indispensable parties". (Serrano II, Slip Op. at pp. 31-36.) Relying on its leading case in *Bank of California v. Superior Court* (1940) 16 Cal.2d 516, 521, 106 P.2d 879, for the definition of "indispensable parties" as those "whose interests, rights, or duties will inevitably be affected by any decree which can be rendered in the action", this Court decided that the Legislature and the Governor do not have such interests in this litigation as render them "indispensable parties". This conclusion appears to have been drawn because the interests of the Legislature and the Governor in this action are not "remotely comparable" to the interests involved in "[t]ypical * * * situations" involving multiple claims to the same property or trust fund.

Although we agree that the interests of the Legislature and the Governor in this action are not "remotely comparable" to the typical situations described, we respectfully submit that their interests in this action are far more vital and far more deserving of judicial protection. It may not be gainsaid that this action is of vital importance to the people of the State of California and accordingly to their elected representatives whose constitutional duty is to enact and sign into law statutes which are appropriate for the promotion of education in California.[6] Not only do the

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[6]Sections 1, 5, 6 and 14 of Article IX of the California Constitution.

Legislature and the Governor (through his veto power over legislation) have the *right* to adopt laws providing for the financing of public schools, they have the constitutional *duty* to do so. They must, of course, exercise their rights and carry out their duties in providing for public schools within the constraints imposed by the California and United States Constitutions. They are not free of judicial determinations as to whether they have observed those constitutional limitations. But surely they have the right to be heard before such judicial determinations are made, if, as in this case, enforcement of the judicial decree would close the public schools in the face of their duty to keep the schools open.

Although it has been authoritatively decided that officers charged with the administration of laws determined to be unconstitutional can be enjoined from implementing such laws, in cases in which the Legislature and the Governor were not parties to the proceedings,[7] these cases relate to laws which the Legislature is not required to legislate upon and to laws which the people of California can do without. But here the Legislature is *required* to legislate upon the matter of public school financing, and such laws are not ones the people of California can well do without.

The interests of the Legislature in the school financing system laws are not merely the usual concern as to the validity of statutes enacted by that body. The Legislature's primary interests are that its school financing laws represent its best efforts to meet its obligations under the Constitution and best serve the

[7]*Blair v. Pitchess* (1971) 5 Cal.3d 258, 486 P.2d 1242, and cases cited, 5 Cal.3d at p. 268.

interests of those who elected the members of that body—the people of California.

The Legislature's right to be heard in this crucially important case is founded upon interests which rise far higher, from the State's point of view, than in the reapportionment cases. In the latter cases, only "institutional interests"—primarily the personal interests of legislators in continuing as legislators—have been involved. Here the legislators' interests are in preserving their rights and carrying out their duties under the California Constitution to legislate effectively upon school financing matters, affecting fundamental rights of the children of California. If there is to be a derogation from those rights, or a judicial determination of the scope of those duties, surely the Legislature has a right to be heard in the judicial proceedings.

That the affirmed judgment does not directly or immediately act upon the Legislature or Governor is no justification for denying them the right to be heard. The compulsion upon the Legislature and Governor to adhere to the standard established by the judgment is as great as it would be had they been parties to the proceedings. The sword of Damocles suspended over their heads by a fine thread, in this case, is the threatened closure of the public schools, which the Legislature and the Governor are constitutionally required to keep open.

It is true, as this Court noted in Serrano II, "that the courts may not order the Legislature or its members to enact or not to enact, or the Governor to sign or not to sign, specific legislation * * *." (Serrano II, Slip Op., p. 32, footnotes omitted.) Nevertheless, since closing the schools by injunction is truly an unthinkable remedy, affecting millions of children who

have not been heard, the remedy used in reapportionment cases is the only appropriate remedy which should be considered in this school financing case. As Mr. Justice Mosk noted in his dissent in *Glendale City Employees' Association, Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 348-349; 540 P.2d 609:

> "The majority, in footnote 24, desperately attempt to find some authority for courts to mandate legislative bodies. They miss the target. * * *
>
> "* * *
>
> "It is true that we ordered the board of supervisors to redistrict supervisorial districts in *Griffin v. Board of Supervisors* (1963) 60 Cal.2d 318 [33 Cal.Rptr. 101, 384 P.2d 421]. I point out, however, that this court obviously has had second thoughts about the propriety of such an order, for it was not repeated in subsequent reapportionment cases. We never again mandated a legislative body to pass a reapportionment act; we indicated that if it did not do so by a specified time, the court would undertake the task. And we did. (*Silver v. Brown* (1965) 63 Cal.2d 270, 281 [46 Cal.Rptr. 308, 405 P.2d 132]; *Legislature v. Reinecke* (1972) 6 Cal.3d 595, 603 [99 Cal. Rptr. 481, 492 P.2d 385]; *Legislature v. Reinecke* (1972) 7 Cal.3d 92, 93 [101 Cal.Rptr. 552, 496 P.2d 464]; *Legislature v. Reinecke* (1973) 10 Cal.3d 396 [110 Cal.Rptr. 718, 516 P.2d 6].)"

But, of course, for the judicial branch to undertake to revamp the school financing system,[8] as it has undertaken reapportionment, the Legislature and the Governor would clearly be indispensable parties. This case moves even closer to the type of action involved in a reapportionment case when it is considered that this Court in Serrano II notes that it is the legislative actions under which school district boundaries have been drawn that have resulted in the unconstitutionality of the educational financing system. (Serrano II, Slip Op., p. 73.)

[8]This would undoubtedly be an awesome task but one which can be done with the aid of legislative representatives in an action in which they are participating as parties.

For the foregoing reasons this is clearly a case in which vital rights of the Legislature and the Governor to be heard have thus far been denied, contrary to the dictates of the due process clauses of the federal and California constitutions. If it were thought that nevertheless those due process rights cannot now be vindicated because appellants have no standing to assert them, we point out that several United States Supreme Court cases strongly indicate that appellants do have such standing in this case. Thus, in a case in which a Florida court entered a judgment without acquiring jurisdiction over a party which was (under a general rule of law to which Florida adhered) "indispensable", the high Court stated:

> "Since state law required the acquisition of jurisdiction over the nonresident trust company before the court was empowered to proceed with the action, any defendant affected by the court's judgment has that 'direct and substantial personal interest in the outcome' that is necessary to challenge whether that jurisdiction was in fact acquired. Chicago v. Atchison, T. & S.F.R. Co. 357 US 77, 2 L ed 2d 1147, 78 S Ct 1063." (*Hanson v. Denckla*, 357 U.S. 235, 245; 2 L.Ed. 2d 1283, 1292-3 (1958).)

See also *Barrows v. Jackson,* 346 U.S. 249, 97 L.Ed. 1586 (1952), holding that a Caucasian signer of a restrictive covenant can defend a damages action for violating the covenant by relying on the constitutional rights of non-Caucasians, and *Pierce v. Society of Sisters,* 268 U.S. 510, 69 L.Ed. 1070 (1924), holding an Oregon compulsory public education law unconstitutional primarily because of its impact on the rights of pupils and their parents asserted only by the owners of private schools; and Stern and Gressman, *Supreme Court Practice,* 4th ed., 1969, pp. 144-146.

Reversal of the trial court judgment for failure to acquire jurisdiction over the Legislature and the Governor, would greatly enhance, rather than thwart, the cause of justice in this case. Their joinder as parties would place their vast resources of expertise and technical information at the disposal of the court and further proceedings would be more a joint effort of all three branches of government, although in adversary proceedings, to attain a constitutional system which would best serve the educational needs of all the children.

We respectfully submit that there should be careful reconsideration of the due process rights of the Legislature and the Governor to be heard in this case, a case which vitally affects their important official interests, rights *and* duties and that accordingly a rehearing should be granted.

CONCLUSION

This crucial case offers this Court an opportunity unprecedented in the annals of history—an opportunity to establish sound constitutional principles which will henceforth assure the children throughout the state of full measures of equality and adequacy of educational opportunities. Courageously grasping this opportunity, this Court can thrust California into the position of leader of the 50 states in the effort to "make available to all children *equally* the *abundant* gifts of learning." (Serrano I, 5 Cal.3d at 619, emphasis added.)

The greatness of the opportunity measures the heaviness of the responsibility. Millions of children and their parents, of present and future generations, are and will be looking to implementation of Serrano II for equal and abundant gifts of learning. How cruel their shattered illusions when they learn that Serrano II assures no measure of equal or abundant gifts of learning! How rude their awakenings when they find that Serrano II merely shifts the more abundant gifts of learning from high tax-base districts to low tax-base districts.![9] How deep their frustrations when they see the chaotic conditions created in their high tax-base schools by their rapid transformation to disadvantaged schools! Unquestionably the responsibility to the children and their parents is as heavy as the

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[9]The *only* assurance of Serrano II is that the influence of "district wealth" on educational spending will be as shown in Chart 9, p. 13, rather than Chart 1.

opportunity to vindicate their constitutional rights is great.

The responsibility of the judicial branch to the legislative and executive branches of California government is just as heavy. The legislators and the governor —the elected representatives of these same children and their parents—are duty-bound by their oaths of office and constitutional mandate to exert their best efforts to enact laws designed to provide each and every child with the most abundant gifts of learning the State can provide.

The judicial branch's heavy responsibility to the legislative and executive branches would not be fulfilled by unilateral interjection into their constitutionally-mandated school financing legislative processes. Certainly the legislative and executive branches are constitutionally entitled to be invited into the inner-circle of decision-making on these vitally important matters. Their constitutionally-specified interests, rights and duties with respect to providing for the public schools and fully representing their constituent children and parents, surely entitles them to no less. Their resources, in terms of technical information and expertise, would then be available so that all three branches of government would be working more cooperatively, albeit in adversary proceedings, to achieve a constitutional system which best serves the children's fundamental interests.

Appellants respectfully submit that careful consideration of the grounds set forth in this petition, and

the all-important goal of assuring all children full measures of equal and abundant gifts of learning, must inexorably result in this Court granting the requested rehearing.

Dated: January 14, 1977.

Respectfully submitted,

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APPENDIX J.

Constitutional, Statutory, and Administrative Provisions Involved.

UNITED STATES CONSTITUTION

Amendment 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14.

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CALIFORNIA CONSTITUTION

Article I, § 7.

(a) A person may not be deprived of life, liberty,

or property without due process of law or denied equal protection of the laws.

(b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked.

Article III, § 3.

The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.

Article IV, § 1.

The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum.

Article IV, § 10.

(a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor. The Governor may veto it by returning it with any objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, two thirds of the membership concurring, it becomes a statute. A bill presented to the Governor that is not returned within 12 days becomes a statute; provided, that any bill passed by the Legislature before September 1 of the second calendar year of the bien-

nium of the legislative session and in the possession of the Governor on or after September 1 that is not returned by the Governor on or before September 30 of that year becomes a statute. The Legislature may not present to the Governor any bill after November 15 of the second calendar year of the biennium of the legislative session. If the Legislature by adjournment of a special session prevents the return of a bill with the veto message, the bill becomes a statute unless the Governor vetoes the bill within 12 days by depositing it and the veto message in the office of the Secretary of State.

Any bill introduced during the first year of the biennium of the legislative session that has not been passed by the house of origin by the thirtieth day of January of the second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.

(b) The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. The Governor shall append to the bill a statement of the items reduced or eliminated with the reasons for the action. The Governor shall transmit to the house originating the bill a copy of the statement and reasons. Items reduced or eliminated shall be separately

reconsidered and may be passed over the Governor's veto in the same manner as bills.

Article IV, § 16.

(a) All laws of a general nature have uniform operation.

(b) A local or special statute is invalid in any case if a general statute can be made applicable.

Article IX, § 1.

A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

Article IX, § 5.

The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

Article IX, § 6.

Each person, other than a substitute employee, employed by a school district as a teacher or in any other position requiring certification qualifications shall be paid a salary which shall be at the rate of an annual salary of not less than twenty-four hundred dollars ($2,400) for a person serving full time, as defined by law.

The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition,

the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System.

The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars ($180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next preceding fiscal year.

The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts and other agencies maintaining such schools, for the support of, and aid to, kindergarten schools, elementary schools, secondary schools, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars ($2,400).

Solely with respect to any retirement system provided for in the charter of any county or city and county pursuant to the provisions of which

the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by said county or city and county, all amounts apportioned to said county or city and county, or to school districts therein, pursuant to the provisions of this section shall be considered as though derived from county or city and county school taxes for the support of county and city and county government and not money provided by the State within the meaning of this section.

Article IX, § 6½.

Nothing in this Constitution contained shall forbid the formation of districts for school purposes situate in more than one county or the issuance of bonds by such district under such general laws as have been or may hereafter be prescribed by the Legislature; and the officers mentioned in such laws shall be authorized to levy and assess such taxes and perform all such other acts as may be prescribed therein for the purpose of paying such bonds and carrying out the other powers conferred upon such districts; provided, that all such bonds shall be issued subject to the limitations prescribed in section 18 of article eleven hereof [Art XIII § 40].

Article IX, § 14.

The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and community college districts, of every kind and class, and may classify such districts.

The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

Article XIII, § 1.

Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value.

Article XIII, § 14.

All property taxed by local government shall be assessed in the county, city, and district in which it is situated.

Article XIII, § 20.

The Legislature may provide maximum property tax rates and bonding limits for local governments.

Article XIII, § 21.

Within such limits as may be provided under Section 20 of this Article, the Legislature shall provide for an annual levy by county governing bodies

of school district taxes sufficient to produce annual revenues for each district that the district's board determines are required for its schools and district functions.

CALIFORNIA STATUTES

Code of Civil Procedure § 389.

(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise, inconsistent obligations by reason of his claimed interest, If he has not been so joined, the court shall order that he be made a party.

(b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions

in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for non-joinder.

(c) A complaint or cross-complaint shall state the names, if known to the pleader, of any persons as described in paragraph (1) or (2) of subdivision (a) who are not joined, and the reasons why they are not joined.

(d) Nothing in this section affects the law applicable to class actions.

CALIFORNIA RULES OF COURT

Rule 216.

When filed, the pretrial conference order becomes a part of the record in the case and, where inconsistent with the pleadings, controls the subsequent course of the case unless modified at or before trial to prevent manifest injustice. Any motion so to modify before trial shall be heard by the pretrial conference judge or, if not available, before the presiding judge or, if none, before any judge sitting in that court.

Service of the within and receipt of a copy thereof is hereby admitted this ..... day of May, A.D. 1977.

IN THE

Supreme Court of the United States

October Term, 1976
No. 76-1512

RICHARD M. CLOWES, Superintendent of Schools of the County of Los Angeles; HOWARD B. ALVORD, Treasurer and Tax Collector of the County of Los Angeles; LONG BEACH UNIFIED SCHOOL DISTRICT; EL SEGUNDO UNIFIED SCHOOL DISTRICT; BURBANK UNIFIED SCHOOL DISTRICT; BEVERLY HILLS UNIFIED SCHOOL DISTRICT; and SAN MARINO UNIFIED SCHOOL DISTRICT,

Petitioners,

vs.

JOHN SERRANO, JR., *et al.*,

Respondents.

Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of the State of California.

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

IN THE

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RICHARD M. CLOWES, Superintendent of Schools of the County of Los Angeles; HOWARD B. ALVORD, Treasurer and Tax Collector of the County of Los Angeles; LONG BEACH UNIFIED SCHOOL DISTRICT; EL SEGUNDO UNIFIED SCHOOL DISTRICT; BURBANK UNIFIED SCHOOL DISTRICT, BEVERLY HILLS UNIFIED SCHOOL DISTRICT; and SAN MARINO UNIFIED SCHOOL DISTRICT,

Petitioners,

vs.

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Respondents.

Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of the State of California.

Question Presented.

Whether a California state court judgment which declared that the state's school financing system violates the California Constitution abridged the due process rights of either the Governor and Legislature of California or school children affected by the decision because the court refused to join the Governor and the Legislature as parties in the judicial proceedings leading to the judgment, where:

(1) The challenged state court judgment explicitly refrained from issuing any directives to the Governor and the Legislature;

(2) Neither the Governor nor the Legislature requested that they be joined as parties and are not presently asserting any due process rights, despite their knowledge of the case for the past nine years;

(3) The constitutionality of the school financing system was vigorously defended in nine years of litigation; and

(4) The outcome of the case could not possibly have been altered by the intervention of the Legislature and Governor.

Statement of the Case.

On December 30, 1976, following nine years of litigation, the California Supreme Court ruled that the state's public school financing system violates the equal protection provisions of the California Constitution. *Serrano v. Priest,* 18 Cal. 3d 728 (1976), Petitioners' Appendix, at p. 1 (hereafter *Serrano II*). The court held that the system impermissibly conditions the availability of educational opportunity for each student on the property wealth of the school district in which he or she resides. In its decision, the state Supreme Court affirmed a trial court judgment granting declaratory relief, allowing the financing system to remain in operation for a reasonable period of time, and maintaining jurisdiction over the case until the system is brought into constitutional compliance.

Respondents will not challenge most of petitioners' Statement of the Case. However, respondents do seek

to clarify one of petitioners' statements regarding the holdings of the courts below. Petitioners state that the trial court "purports by its enforceable declaratory relief judgment to specify powers and duties of the legislature and governor with respect to enacting into law a constitutional school financing system." Petition, at p. 9.

In fact, in no part of the trial court judgment is there an order for the Legislature or the Governor to take any action. While the trial court quite properly may have envisioned that the Legislature and Governor would do everything possible to bring the school financing system into constitutional compliance, the court stated, "[T]his Judgment is not intended to require, and is not to be construed as requiring, the adoption of any particular plan or system for financing the public elementary and secondary schools of the state, but only that whatever plan or system for financing the public elementary and secondary schools that may be adopted must be one that will fully comply with the equal-protection-of-the-laws provisions of the California Constitution . . ." Judgment of the Trial Court, reproduced in Petitioners' Appendix, at p. 288.

ARGUMENT.

The Petition herein raises no federal question worthy of this Court's attention. In an attempt to attack a state court decision based solely on state constitutional grounds, petitioners have manufactured the asserted federal due process right of a state governor and legislature to be heard in all cases in which the constitutionality of a statute has been challenged. As will be shown, petitioners lack standing to raise such an argument which, in any case, is totally devoid of merit. In addition, the petition fails to state a valid reason, pursuant to Supreme Court Rule 19, why this Court should grant the discretionary Writ of Certiorari.[1]

I.

Petitioners Lack Standing to Raise Their Federal Due Process Claim.

Petitioners do not have standing to argue the asserted due process rights of the Governor and the Legislature to represent California school children. This Court has stated, "In the ordinary case, a party is denied standing to assert the rights of third persons." *Vil. of Arlington Hts. v. Metro. Housing Dev.*, ... U.S. ....., ..., 97 S. Ct. 555, 562 (1977), citing *Warth v. Seldin*, 422 U.S. 490, 499, 508-510 (1975) (holding, *inter alia*, that non-indigent taxpayers of the city of Rochester had no standing to argue that the zoning practices of the city of Penfield harmed low income people).

Exceptions to this rule are made in two circumstances. First, parties may have standing to assert that

[1]Rule 19, subdivision (a) provides that this Court generally will deny a petition for a writ of certiorari unless "a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

a challenged action "adversely affects a relationship existing between them and the persons whose rights assertedly are violated." *Warth v. Seldin, supra,* at p. 510; see *Pierce v. Society of Sisters,* 268 U.S. 510, 534-536 (1925), ruling that owners of private schools had standing to challenge state law requiring students to attend public schools.

Second, a party may argue on behalf of a third party when he or she is "the only effective adversary" able to protect the rights of the third party. *Barrows v. Jackson,* 346 U.S. 249, 259 (1953), holding that a white person sued for breaching a covenant to forbid use of property by non-Caucasians had standing to assert that the covenant unlawfully discriminated against blacks.

But in the present case neither exception applies. It cannot possibly be argued *Serrano II* adversely affects a special relationship between petitioners and the Governor and Legislature or a relationship between petitioners and California school children residing outside of Los Angeles County. The *parens patriae* relationship petitioners assert (Petition, at p. 27) is between the *Legislature* and California students, not between petitioner and those students. Moreover, unlike the respondent in *Barrows v. Jackson, supra,* petitioners are neither the only nor the best adversaries to protest the exclusion of the Governor and the Legislature from the case. Obviously, the Governor and the Legislature, each of whom had knowledge of this widely publicized case from its inception, could have asked for inclusion into the case. If such a request were denied, they could have argued the due process issue that petitioners now seek to raise. They, of course, never sought joinder, and are not now before this Court raising the due

process issue. Neither of the exceptions to the rule against third party standing are applicable, and petitioners therefore lack standing to make their due process claim.

II.

The Legislature and Governor Were Not Indispensable Parties to the Proceedings Below, and No Due Process Rights Were Abridged by Their Exclusion From the Proceedings Below.

The California Supreme Court correctly decided that the Legislature and Governor were not indispensable parties who should have been joined in the *Serrano* litigation. None of petitioners' arguments herein have raised any doubts about the validity of that decision.

The California Supreme Court held petitioners had to show that the Legislature and Governor were both proper parties and indispensable parties. Petitioners' due process argument herein rests on the additional premise that the Legislature and Governor were so indispensable that their failure to be heard in the case violated their due process rights and those of California school children.

In seeking to meet this heavy burden, petitioners stumble at the starting gate. Little authority is offered to oppose the longstanding rule that "in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant." *Serrano II,* 18 Cal. 3d at p. 752, Petitioners' Appendix, at p. 30. Petitioners note that the Legislature has been a party in certain reapportionment cases, but fail to counter the observation in *Serrano II* that in those cases, in contrast to *Serrano,* the Legislature had a direct institutional

interest. *Serrano II,* 18 Cal. 3d at p. 752, Petitioners' Appendix, at p. 30, citing *Silver v. Jordan,* 241 F. Supp. 576, 579 (S.D. Cal. 1964); and *Minnesota State Senate v. Beens,* 406 U.S. 187, 194 (1972).

Petitioners are on even shakier ground in arguing that the Legislature and Governor are indispensable parties. Indeed, petitioners offer no authority for this novel proposition. Respondents have been able to find only one case in which a defendant has even argued the point, and there the argument was rejected. In *Gates v. Collier,* 501 F. 2d 1291 (5th Cir. 1974), Mississippi state prison officials appealed a judgment declaring certain aspects of the state prison system unconstitutional and ordering changes to be made. Defendants contended that since any changes would require expenditures, the state legislature was a necessary party to the action. The Fifth Circuit Court of Appeals, affirming the trial court judgment, replied, "But the district court did not require that the legislature appropriate monies for prison reform; it simply held, in keeping with a plethora of precedent on the fund shortage problem, that if the State chooses to run a prison it must do so without depriving inmates of the rights guaranteed to them by the federal constitution." *Id.* at p. 1320.

Similar rules apply to attempts to join governors as parties. The governor of a state may be joined as a *proper* party in an attack on a law only if he or she has a connection with enforcement of the challenged act. *Ex parte Young,* 209 U.S. 123, 157 (1908). But a governor may not be joined even as a proper party in his role as an initiator of legislation. (*Committee for Public Ed. & Relig. Lib. v. Rockefeller,* 322 F. Supp. 678, 686 (S.D. N.Y. 1971).)

In the present case, as in *Gates v. Collier,* the trial court has not ordered the Legislature to appropriate any money. All it held was that if, after a reasonable period of time, the system of financing schools was not brought into constitutional compliance, some kind of injunctive relief might be granted. Even then, the injunctive relief would be granted against administrative officials, not the Legislature. *Serrano II,* 18 Cal. 3d 728, 751, fn. 25, Petitioners' Appendix, at p. 29, fn. 25. No action is contemplated against the Governor and the Legislature, which accordingly are not indispensable parties.

It follows that the exclusion of the Governor and the Legislature from the proceedings below was not a violation of the due process clause. Due process requires that an opportunity to be heard must be given to parties to an action, not to the whole world. Since the Legislature and Governor were not indispensable parties, no due process rights were violated by their exclusion below.

It can readily be seen that any other ruling would have disastrous effects on the judicial system in general and on this case in particular. As far as the judicial system is concerned, one can easily envision the chaos that would ensue if the Legislature and Governor were joined as parties in every suit challenging the constitutionality of a statute. Consider, for example, the problems attendant with proof of service, depositions, the question of the extent of liability of the Legislature, and the question of who would be entitled to speak for the separate branches of and differing views within the Legislature. The prospect of the Governor of California made subject to deposition as a party defendant in hundreds of lawsuits each year is less than enticing.

See Cal. Code Civ. Proc. §2019, subd. (4). Moreover, state separation of powers problems would arise if a trial court could order a governor or a legislature to appear as parties in suits challenging state statutes. Cal. Const. Art. III, §3; see *French v. Senate,* 146 Cal. 604, 606-607 (1905).

In the present case, to order at this late date that the Legislature and the Governor be joined as parties would be illogical and inequitable. As the California Supreme Court put it, "This case has been well-known to those entities [the Legislature and the Governor] since its inception, yet they have at no point sought intervention or indicated any interest in doing so. Even more significantly, this is a matter whose resolution has been anxiously awaited by the parties and the public at large for more than seven years. In light of these considerations we are convinced that to invoke the doctrine of indispensability, and thus require the renewal of trial proceedings on this ground, would indeed be to 'thwart rather than accomplish justice.' " *Serrano II,* 18 Cal. 3d at p. 753, Petitioners' Appendix, at p. 32. Now that *Serrano II* is final, and the Legislature and Governor are moving towards compliance with the decision, an even greater travesty of justice would occur if this Court were to grant the petition herein.

III.

Petitioners Have Failed to Raise a Federal Question of Importance.

Even if petitioners could raise doubts about the correctness of the decision below, they have not demonstrated the importance of the alleged federal question presented. Petitioners contend that the due process issue is important to the public because (1) two million

school children adversely affected by the *Serrano II* decision were denied their day in court (Petition, at pp. 18, 19); (2) the decision touches on the question of the role of courts in constitutional adjudication regarding affirmative legislative duties (Petition, at pp. 19-23); and (3) the decision raises questions of separation of powers (Petition, at pp. 23-24). The first reason is inaccurately stated, while the latter two are not federal concerns, much less important federal concerns in this case.

A. Representation of School Children Below.

Assuming *arguendo* that some school children might be adversely affected by the *Serrano II* opinion,[2] petitioners still have failed to raise an important federal issue. Who will benefit from *Serrano* is not the issue before this Court; in order to demonstrate the existence of an important federal question, petitioners must show not only that some school children might be harmed by *Serrano II*, but that the interests of these students were not adequately represented in the case.[3] In this regard, petitioners fail completely.

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[2]It is far from clear that any student will be adversely affected by *Serrano II*. In order to fashion a constitutional financing system the Legislature may either increase state aid to low wealth districts or decrease aid to high wealth districts. To the extent that it takes the former course of action, no educational interest will be hindered. Petitioners' statement that half of the state's children will be adversely affected assumes that the court ordered a particular kind of financing scheme (Petition, at p. 18, fn. 11) when, in fact, as mentioned above, the court expressly refrained from giving such specific instructions.

[3]Of course, respondents do not concede that if some governmental interest were not raised, petitioners' due process argument would be valid. As addressed briefly *supra* (sections I and II), petitioners' due process claim is wholly unmeritorious. The point here is that petitioners' chief argument why the federal issue raised is important—because millions of California school children allegedly were adversely affected by the decision below and at the same time were denied their day in court—is contradicted by the facts of the case.

Defendants at trial in this case represented all conceivable state interests. They included not only the petitioner Superintendent of Schools for Los Angeles County—where a third of the state's school children reside—but also the state Controller, the state Treasurer, and the state Superintendent of Public Instruction, all high elected officials. To argue that the Superintendent of Public Instruction, the most important educational official in California (see Cal. Ed. Code §33112, formerly §253), is incapable of representing California school children defies common sense.

Equally important, if the Legislature and the Governor had been parties, they would have been represented by the state Attorney General, who in fact was counsel for the defendant Treasurer. Thus, since defendants were already able to call upon the litigation resources of the state, it is difficult to envision how the joinder of the Governor and the Legislature could have made any practical difference.[4]

In fact, during the 60 days of trial, in two California Supreme Court opinions, and in three dissenting opinions, no major issue was left unraised, and no significant fact that could have altered the outcome of the case was left unpresented. Petitioners strive valiantly to support their contention that the absence of the Legislature created a lack of "concrete adverseness" (Petition,

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[4]As the Petition notes (pp. 15-16), the Superintendent testified for plaintiffs at trial, and the Attorney General did not file an appeal of the trial court decision. However, petitioners cannot possibly fault the Superintendent for testifying according to his knowledge and beliefs, or other state defendants for refusing to pursue a doomed appeal. To argue that because of the state defendants' actions school children were denied due process rights is akin to suggesting that the citizens of the United States are denied due process when the Solicitor General admits governmental error to this Court or refuses to appeal a judgment against the United States government.

at p. 22), but the only example they can point to is a finding of fact by the trial court that certain alternatives to the present school financing system were workable (*Id.*, at pp. 21-22). Such a determination, petitioners argue, should not have been made without the aid of the Legislature and the Governor.

The argument is twice flawed. To begin with, the finding that certain alternative school financing systems might be feasible is not crucial to the judgment below, which, as emphasized previously, did not mandate a particular financing system. Equally important, it is doubtful that the Legislature and the Governor could have added any governmental expertise on the subject that was not already provided by other defendants, who included the highest financial and educational officers in California. All that the lawmakers and the chief executive could have provided was an opinion on the desirability or *political* feasibility of alternative systems, not issues addressed by the court. It must be concluded that "no governmental interest has lacked for able and willing advocates" (*Serrano II*, 18 Cal. 3d at p. 753, Petitioners' Appendix, at p. 32), and that the outcome of the case could not possibly have been altered by legislative or gubernatorial participation.

B. Questions Concerning Role of State Courts.

Petitioners' other two reasons for granting the writ of certiorari concern the role of state courts in constitutional adjudication and the separation of powers between state courts and state legislatures. The relationship of these concerns to the due process issue, the sole question presented to this Court (Petition, at p. 4), is at best tenuous, and respondents do not agree that any question of judicial overreaching or separation of powers is raised by the decision in *Serrano II*. But in any case, neither of these matters concern

a federal court. It bears reemphasis that the decision was grounded solely on the California Constitution. *Serrano II*, 18 Cal. 3d at p. 765, Petitioners' Appendix at p. 50. No federal constitutional provision specifies the division of power between state legislatures and state courts in regard to state constitutional matters. *Cf.* Cal. Const. Art. III, §3 (separation of powers clause). Petitioners' arguments amount at best to a claim that the California Supreme Court has violated Article IV, §4, of the federal Constitution, which guarantees to each state a republican form of government. As this Court has repeatedly emphasized, the guaranty clause can only be enforced by Congress (*Baker v. Carr*, 369 U.S. 186, 220-224 (1962) and cases cited therein), and petitions for writs of certiorari based on the guaranty clause have already been denied in a similar school finance case. *Dickey v. Robinson*, No. 73-430, petition summarized in 42 U.S.L.W. 3205 (October 9, 1973), *cert. denied*, 414 U.S. 976 (1973). In conclusion, the petition herein has failed to raise a question of substantial federal concern.

IV.
The Decision Below Conflicts With No Decisions of This Court.

Petitioners' assertion that *Serrano II* "conflicts in principle with decisions of this Court" (Petition, at p. 24) fails on its face to allege the type of conflict between state court and Supreme Court decisions envisioned by Rule 19, subdivision (a). Petitioners are asserting not that there is a conflict between this Court and the California Supreme Court, but that the decision below was erroneously decided. This assertion is not sufficient to invoke the discretionary powers of this Court.

Indeed, one strains to find the relevance to this opinion of *Pennoyer v. Neff*, 95 U.S. 714 (1877) and *Hanson v. Denckla*, 357 U.S. 235 (1958), the decisions allegedly conflicting with *Serrano II*. Petition, at p. 25. Both those opinions dealt with the validity of state "long arm statutes," statutes that allow a court to exercise personal jurisdiction over out-of-state parties. In each case, the nonresident party's status as an indispensable party was unquestioned and the only issue was whether personal jurisdiction could be asserted consistent with the due process clause. Neither case discussed at any length the question of what constitutes an indispensable party, and certainly neither case involved a contention by a defendant that a state governmental body was an indispensable party denied due process. It should be difficult to find more inapposite cases. The conclusion is inescapable that petitioners have failed to specify reasons for granting the petition sufficient to satisfy the principles articulated in Rule 19.

Conclusion.

For the above reasons, the Petition for Writ of Certiorari herein should be denied.

Respectfully submitted,

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